

1 the voter Registrar's Office sends over
2 recommendations.

3 The board had only seven days to rule on
4 whether a vote counts or not, but harding said the
5 process was made even more difficult because he didn't
6 get the bulk of the ballots from Betencort's office
7 until the final day.

8 On hundreds of voter forms information has
9 been mapped by the Registrar's Office with white
10 correction fluid and then altered with new
11 information.

12 As Ballot Board members determine whether
13 ballots should be counted, Harding said they wanted to
14 have confidence in the accuracy of the Registrar's
15 research. But quote, that kind of confidence is not
16 replicated here.

17 And then when they see this white out all
18 over the place, they get nervous, meaning his workers,
19 unquote. He said.

20 REPRESENTATIVE HEFLIN: Okay. Let me
21 interrupt you real quick.

22 DIANE TRAUTMAN: Okay. Sure.

23 REPRESENTATIVE HEFLIN: Because we're
24 trying to move on here today.

25 As to -- and I don't like the issue, I



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1 don't like the name of a Voter ID bill. I think we
2 ought to be doing a voter enhancement bill, if
3 anything.

4 Do you believe that if we had treatment,
5 better treatment of provisional ballots, whereas
6 someone gets to a poll at 5:07, they don't have their
7 ID, they can come back the next day or so and appear,
8 like they do in Indiana?

9 Do you believe that that's a realistic
10 step in this understanding? This is a tall stair
11 we're going up one step in the process of enhancing
12 voters?

13 DIANE TRAUTMAN: Honestly, if we can take
14 that much time to address it, then it must not be
15 something that is in dire straits that we take care
16 of.

17 So I think, again, you know, we're chasing
18 a solution in search of a problem.

19 REPRESENTATIVE HEFLIN: Oftentimes here in
20 Austin, we fix many things that are not broken.

21 But if we're going to try to fix this
22 thing that's apparently not broken, would you agree,
23 and you ran for office, that treatment of provisional
24 ballots, whereas to make sure we don't lose 11,000
25 voters, would be a logical step in our process?



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1 DIANE TRAUTMAN: We want to protect the
2 voters, but a Voter ID bill, the way that I see it,
3 would cause more provisional votes.

4 REPRESENTATIVE HEFLIN: Okay.

5 DIANE TRAUTMAN: Thereby adding to the
6 problem of the burdening an already overburdened and
7 under trained Tax Office.

8 REPRESENTATIVE HEFLIN: And as with all
9 due respect to Mr. Chairman: Those issues that he
10 went on and on about, honestly.

11 CHAIRMAN TODD SMITH: Seven minutes.

12 REPRESENTATIVE HEFLIN: Seven minutes, you
13 have no personal knowledge to those, do you?

14 DIANE TRAUTMAN: I do not.

15 REPRESENTATIVE HEFLIN: Okay. Thank you
16 very much. Thanks for coming down.

17 CHAIRMAN TODD SMITH: Raise your hand,
18 members.

19 Representative Brown.

20 REPRESENTATIVE BROWN: Ms. Trautman, you
21 referred to those ballots being received so late in
22 offices or the registration -- voter registration
23 applications being received too late.

24 How long a period of time does it take?
25 Do the authorities have after receiving those to get



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1 them to make them effective?

2 DIANE TRAUTMAN: Seven days. Seven days
3 is the usual time.

4 REPRESENTATIVE BROWN: I beg your pardon?

5 DIANE TRAUTMAN: Seven days.

6 REPRESENTATIVE BROWN: You send in a Voter
7 Registration Application and they have to have it
8 effective in seven days?

9 DIANE TRAUTMAN: They have to notify you
10 -- well, at that point, I'm not sure I understand your
11 question.

12 Are you talking about the people who had
13 already sent them in and they were waiting and they
14 got turned away at the polls?

15 REPRESENTATIVE BROWN: Yes. People who
16 had sent in a Voter Registration Application. And
17 you're saying they have to have seven days to turn
18 that around?

19 DIANE TRAUTMAN: Well, yes, they have to
20 let them know in seven days, exactly. After that
21 time, when they were turned away at the polls and they
22 had them -- many of them had sent them in, as many as
23 40 days earlier.

24 REPRESENTATIVE BROWN: Okay. It's my
25 understanding the office has 30 days to make that



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1 application effective for them to be able to vote.

2 DIANE TRAUTMAN: Okay.

3 REPRESENTATIVE BROWN: 30 days.

4 DIANE TRAUTMAN: I may be wrong on that.

5 REPRESENTATIVE BROWN: I think everyone
6 here would have to agree with me.

7 DIANE TRAUTMAN: But there's a seven-day
8 notification I know that they have to do.

9 REPRESENTATIVE BROWN: Any would be after
10 -- I don't know, something else happened. But when
11 you sent in an application for a Voter Registration
12 card --

13 DIANE TRAUTMAN: That is correct. But I'm
14 talking -- this is a different situation.

15 These people had been waiting months, and
16 assumed they were ready to vote, they thought they
17 were on the road.

18 REPRESENTATIVE BROWN: Okay.

19 DIANE TRAUTMAN: And they went there and
20 they were not: They were rejected.

21 REPRESENTATIVE BROWN: Have you ever
22 worked an election?

23 DIANE TRAUTMAN: Yes.

24 REPRESENTATIVE BROWN: So you are familiar
25 with the process.



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1 How many elections did you work?

2 DIANE TRAUTMAN: I worked as a clerk a
3 couple of times before I ran for office.

4 REPRESENTATIVE BROWN: And you're
5 testifying as an authority on the issue?

6 DIANE TRAUTMAN: No. I'm testifying as a
7 citizen, a private citizen very concerned about
8 keeping our elections free and making sure that
9 everyone's right to vote is protected.

10 REPRESENTATIVE BROWN: I agree with that.
11 That's a worthy goal. We're all here to do that.

12 CHAIRMAN TODD SMITH: Anybody else on the
13 committee who wishes to ask this witness a question
14 before I let one of our non-committee members ask a
15 question?

16 Take your chance now if you have any
17 questions.

18 Represent Allen. Dr. Allen.

19 REPRESENTATIVE ALLEN: I just wanted to
20 say to Ms. Trautman, thank you for coming today and
21 thank you for all the services you've rendered to our
22 community.

23 And if we were not doing a Voter ID bill,
24 and I know that you would know after you did all of
25 your research for running for your position, what



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1 would you recommend we be doing rather than doing a
2 Voter ID bill today? What would be a better use of
3 our time and resources?

4 DIANE TRAUTMAN: I definitely think we
5 need to be addressing public school funding.

6 In my district, my home district, Humble
7 ISD we have seen teacher layoffs. We have seen
8 schools unable to open, that have been built because
9 we can't afford it.

10 We must have a school funding formula that
11 fairly addresses the adequate and equality of school
12 funding statewide. I think there's no higher or more
13 important calling right now.

14 REPRESENTATIVE ALLEN: Thank you.

15 CHAIRMAN TODD SMITH: Does everybody on
16 the committee have what they need?

17 Representative Gutierrez.

18 REPRESENTATIVE GUTIERREZ: Thank you,
19 Mr. Chair. I'll make this brief and I promise I'll
20 leave after this.

21 CHAIRMAN TODD SMITH: You don't have to do
22 that. You can stay with us all night long if you want
23 to.

24 REPRESENTATIVE GUTIERREZ: This is an
25 important issue to folks in my district back home.



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1 And I wanted to ask Mr. Rokita some
2 questions but unfortunately was unable to.

3 So I'll ask Ms. Trautman some questions.

4 Ms. Trautman, what you do is obviously
5 very important, correct? And the chairman brought up
6 certain issues that you weren't familiar.

7 Were you familiar with any of the
8 investigations in Texas, at all?

9 DIANE TRAUTMAN: The investigations, as
10 far as --

11 REPRESENTATIVE GUTIERREZ: Different
12 district attorneys also investigated this issue in
13 their own counties. Are you familiar with any of them
14 at all?

15 DIANE TRAUTMAN: Again, unless it was
16 prosecuted, no.

17 REPRESENTATIVE GUTIERREZ: Well, for
18 instance in Bexar County, our Republican District
19 Attorney, Susan Reed, investigated this issue at
20 length, and only found two instances of legal citizens
21 going to jury duty and saying they were illegal
22 immigrants.

23 So indeed, she had found no voter fraud of
24 any kind or Voter ID issues in Bear County.

25 So with that in mind, Mr. Chairman, I just



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1 want to reiterate some of the things that have been
2 said and insure that when we have witnesses come up
3 and I thank you for your time in what you said.

4 Because, indeed, this is what you call it
5 -- we don't want to find solutions to problems that
6 don't exist and you said it a lot better than that.

7 I think that when we do have witnesses
8 like the previous witnesses, like the previous witness
9 we need to limit ourself to evidentiary issues and not
10 anecdotal data that cannot be supported.

11 So with that in mind, Mr. Chairman, I'll
12 do as I said and promise to just sit back and listen.

13 This is an important issue to me because
14 my parents were immigrants to this country and they
15 worked very hard to get here and they earned their
16 right to vote.

17 So I did want to spend a little bit of
18 time with you today and ask you to be considerate of
19 the evidence that's presented and not anecdotal
20 information or folks that want to rely on certain
21 studies but not others.

22 CHAIRMAN TODD SMITH: And let me just say
23 for the record that in the last few weeks I've been
24 reading a little bit of this stuff.

25 And on one side of the issue, the argument



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1 is that fraud occurs primarily with absentee-ballots
2 and there's not a lot of evidence of in-person fraud.

3 And on the other side of the argument is
4 the argument that while there's not a lot of proof of
5 in-person fraud, that it may be the tip of the iceberg
6 and therefore, there is reason to enhance the security
7 of our elections. That's the debate that's been
8 occurring.

9 It's the first time I've heard a witness
10 actually take the position that they don't believe
11 there is a lot of voter fraud that occurs even with
12 regard to absentee-ballots.

13 And let me just say that when we have
14 proof, it's not a matter of opinion, it's a fact, that
15 we have many instances that have been demonstrated of
16 inside the state and outside the state of people
17 voting after they've died, and in almost every
18 instance, they are not prosecuted because nobody knows
19 who cast that dead persons vote.

20 The only thing we know for sure is that it
21 wasn't the dead person. And so I think that that is
22 an example of how you can know there is voter fraud
23 and know at the same time that it was not prosecuted
24 because you can't do it.

25 And so that's not an opinion I'm



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1 expressing. That's a fact.

2 And I am here today to hear from both
3 sides of the argument on issues that are a matter of
4 legitimate discussion about people's opinions. But
5 when the testimony goes outside the bounds of what we
6 know, then I'm probably going to ask an asserted
7 question or two.

8 All right. Thank you. Thank you very
9 much for taking time to be with us today.

10 DIANE TRAUTMAN: Certainly.

11 CHAIRMAN TODD SMITH: We appreciate it.

12 At this time the chair calls John Fund,
13 who is representing himself and is the author of a
14 book relating to voter fraud, and I'll let you sell
15 your book if you want to.

16 JOHN FUND: Free copies are available to
17 anyone on the committee's who wants one.

18 CHAIRMAN TODD SMITH: Your name and just
19 to make it clear on the record: You're testifying in
20 favor of Senate Bill 362.

21 JOHN FUND: I'm testifying on the notion
22 of the need for more voter integrity, which includes
23 photo ID or other voter identification requirement.

24 CHAIRMAN TODD SMITH: Your name and who
25 you Representative.



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1 JOHN FUND: John Fund. I'm the author of
2 "Stealing Elections How Voter Fraud Threatens Our
3 Democracy."

4 CHAIRMAN TODD SMITH: All right.

5 JOHN FUND: I want to apologize, first,
6 because I have a flight to catch and I'm not trying to
7 be rude or in any way cut short your questions, nor am
8 I shirking them. But I will have to leave. And I
9 apologize in advance for doing so.

10 I would be happy to answer questions in
11 writing. I would be happy to communicate by telephone
12 with any of the committee members, should they have
13 questions.

14 So I apologize in advance for making my
15 remarks somewhat brief and they will be somewhat
16 truncated.

17 CHAIRMAN TODD SMITH: Tell us what we need
18 to know.

19 JOHN FUND: Well, I think one of the
20 things that Secretary Rokita mentioned is very
21 important, which is we now have a four-year experience
22 with Indiana law in Indiana and some minds have been
23 changed.

24 I have reported from Indiana. I have been
25 one of the people who investigated the Chicago voter



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1 fraud case, which is one of the more infamous voter
2 fraud cases in which an election was thrown out. And
3 we've now had four years of experience.

4 I think the Dallas Morning News article
5 today is very significant because it quotes State
6 Senator Erline Rogers of Gary, Indiana, who says that
7 the Voter ID law in Indiana has not hurt people's
8 ability to vote.

9 In fact, she said that it's helped areas
10 such as her region located close enough to Chicago to
11 carry a stigma to include the reputation.

12 And the quote that Secretary Rokita gave
13 you is for a county such as mine, it is always accused
14 that voter fraud. No one can make those charges
15 anymore. It has helped our image.

16 So I understand that there are people who
17 still view the Indiana law as controversial but there
18 are people who opposed it when they voted on the issue
19 in the legislature in 2005 who have changed their
20 mind. And I think that's significant.

21 In addition I would note that there are
22 also people who were very active in the civil rights
23 movement in the 1960s, who do not believe this is a
24 very controversial issue.

25 I have interviewed Andrew Young who's a



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1 former Mayor of Atlanta and the former UN Ambassador
2 and who was one of the confidants of Martin Luther
3 King.

4 And he believes that yes, it is important
5 that people do not have photo ID or other
6 identification. That's why we should go help them get
7 it.

8 How can you elevate yourself from poverty
9 to the middle class if you don't have ID? We should
10 use this opportunity to include our election integrity
11 to create, to actually get I.D., create integrity to
12 actually get photo ID in the hands of more people.

13 You cannot rent a video. You cannot enter
14 a federal building. You cannot attend a court
15 hearing. You cannot cash a check. You cannot travel
16 on an airplane.

17 You cannot even board an Amtrak train
18 because they have spot checks of ID. You cannot do an
19 awful lot of things in American life without an ID. I
20 don't think that the percentage of people who lack
21 identification is five percent. I think it's far
22 fewer.

23 But for those who do lack identification,
24 whether they're a senior citizen in a nursing home,
25 whether they're some who's elderly and has never had



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1 identification.

2 Whether they're a poor person in an urban
3 ghetto, we should get them ID. That's why Andrew
4 Young supports it. He views it as a positive effort
5 to not only improve election integrity, but to also
6 mainstream people into American society.

7 Now, a point has been made about the fact
8 that there's very little evidence that voter fraud or
9 of the impersonation level exists.

10 Well, yes and no. If you practice voter
11 impersonation fraud or you create fictitious people
12 and vote on their stead or you vote on behalf of dead
13 people, you can get away with it for an awful long
14 time.

15 Democratic Congresswoman Elizabeth
16 Holestein, was very active in the voter investigation
17 of Richard Nixon ordered the District Attorney in
18 Brooklyn.

19 In 1989 her Grand Jury issued a long
20 report on the voter fraud conspiracy involving fraud
21 at the polls, which has operated successfully for
22 14 years. That fraud resulted in thousands of votes
23 being cast fraudulently in state Congressional
24 elections, and involved impersonating voters at polls,
25 voting under fictitious names that have been



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1 successfully registered without, and there's other
2 methods.

3 This fraud could have easily been stopped
4 or detected if it required voters' identity at the
5 poles.

6 According to the grand jury investigation,
7 the advent of mail-in ballot, mail-in registration was
8 also a key factor in the voter fraud.

9 I interviewed people who are active in
10 that investigation. I interviewed people who were
11 active in the Grand Jury. The only reason that scheme
12 and conspiracy, which went on for 14 years, was
13 uncovered is because somebody was indicted for another
14 crime.

15 And in order to carry favor and get a more
16 favorable sentence from the judges, turned state's
17 evidence on the people committing the impersonation
18 fraud.

19 Now, the other examples, I have
20 interviewed people who personally committed
21 impersonation fraud. My colleague Glen Simpson, who
22 is a news reporter for Wall Street Journal has
23 interviewed people who personally committed
24 impersonation fraud.

25 Glen Simpson wrote a book with Larry



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1 Sabato, who is the premiere political scientist at the
2 University of Virginia. The book is called "Dirty
3 Little Secrets."

4 They interviewed people who committed
5 impersonation fraud. Now, why can't I give you their
6 names? Well, it's a felony. It's not exactly that
7 you're going to get people to come out and use their
8 names.

9 I've interviewed those people. I will
10 turn over my notes. I just can't turn over the names
11 of those people.

12 Is it common? Probably not. Does it
13 happen? You betcha. And it is easily done. I can
14 give you ten different ways.

15 You can vote in someone else's name. You
16 can vote for someone who's dead or you can vote and
17 create a completely fictitious person and vote for
18 that person.

19 I can give you about ten different ways to
20 do it with almost no way of being detected. And with
21 almost no ways of knowing that it was done.

22 Now, lastly about prosecutors: I want to
23 reiterate what Secretary Rokita said about
24 prosecutors.

25 This goes at the very bottom of their



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1 priority list for very obvious reasons. You are going
2 to be accused of being partisan no matter who you go
3 after.

4 You're either going to be viewed, as
5 Secretary Rokita said, as a trader or someone who is
6 on some kind of vendetta.

7 I interviewed the U.S. attorney for the
8 northern district of Louisiana, Mr. Washington, who
9 told me, very specifically, that prosecutors are very
10 loathe to go into these kind of cases because quote,
11 we can't do much of anything about ballot box
12 improprieties until the election is over, and.

13 And the closer we get to the election, the
14 less willing we are to get involved because of just
15 the appearance of impropriety, just the appearance of
16 the federal government somehow shaving this election
17 not to occur.

18 If you'll recall the U.S. Attorneys'
19 scandal in 2006 that involved Attorney General
20 Gonzales, one of the major accusations against him was
21 that indictments against the group Acorn had been
22 filed just before the election.

23 And the charge was, and it was certainly
24 at the Center of Congressional Hearings of the U.S.
25 Attorneys, the charge was that this was a clearly



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1 partisan attempt to influence the election.

2 Well, we now have two more years' of
3 experience with Acorn, and we now know a little bit
4 more about what they were about.

5 In Nevada it was a Democratic Attorney
6 General and a Democratic Secretary of State that
7 became so upset by Acorn's tactics that they asked the
8 FBI to raid their offices and you saw what happened.

9 One of the things we learned by the way
10 that what Acorn was doing was that it was employing
11 many of their Registrar's from a work release program
12 at the local prison, including several of the people
13 leading their teams for the Voter Registration efforts
14 have been convicted of identity theft.

15 In other words, Acorn, in Nevada, at
16 least, was hiring specialists.

17 Now, I can understand Justice Department
18 guidelines saying that Acorn should not be indicted
19 just prior to an election. What I can't understand is
20 that that is then used as proof that the prosecutions
21 of these cases are very easy.

22 They are not very easy. And I will just
23 tell you if any prosecutor ever files these cases,
24 they have personally told me, many of them, they
25 recognized in their political correctness that charges



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1 of discrimination and Jim Crow tactics are going to be
2 leveled against them. And they would view it as
3 unfair, but it also acts as a barrier against everyone
4 in those cases or, at least, makes it a priority.

5 I only have a couple of minutes for
6 questions and I apologize in advance.

7 CHAIRMAN TODD SMITH: I think if you need
8 an hour before your 4:50 flight, you can make it,
9 based on my experience, comfortably.

10 Can you give the opposition here eight
11 minutes or is that too much?

12 JOHN FUND: I will try.

13 CHAIRMAN TODD SMITH: I will give the
14 questions to my Democratic colleagues, given the fact
15 that you're willing to leave.

16 JOHN FUND: That's all right. If I have
17 to leave --

18 CHAIRMAN TODD SMITH: That's all right.
19 If they ask a good question, just get up and leave.

20 JOHN FUND: No. No. No, I don't do that.

21 CHAIRMAN TODD SMITH: Representative
22 Heflin.

23 REPRESENTATIVE HEFLIN: Mr. Fund, I
24 appreciate you being here today.

25 JOHN FUND: Thank you.



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1 REPRESENTATIVE HEFLIN: I wouldn't
2 disagree with you.

3 You said you have to have ID if you're
4 going to rent a movie. If you're going to cash a
5 check. Those are privileges. Those are not rights.

6 I think that voting is a sacred right that
7 we need to protect and enhance in this entire process.
8 So I want to ask you this question: To enhance voter
9 participation, what's your No. One step you will take?

10 JOHN FUND: First of all, let me
11 respectfully disagree with you because if you can name
12 an industrialized democracy that does not require
13 people to show proof of their existence and their
14 identity at the polls, I will send \$7,500 to your
15 favorite charity.

16 We are the only country in the world, the
17 only country in the world, that operates on the honor
18 system when it comes to elections.

19 I believe we need a comprehensive set of
20 reforms to improve voter integrity. I also believe we
21 need a comprehensive reform to improve access to the
22 polls.

23 I also believe we need to spend more time
24 and effort to try to train a new generation of poll
25 workers to replace the average age of 70 at the polls,



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1 who don't necessarily have the most up-to-date
2 knowledge of technology and, therefore, we have a new
3 generation of people that helps these people with the
4 polls.

5 So I don't want to single out a single
6 example. I just want to say we have to do an awful
7 lot because Walter Dean Burnham, who teaches just down
8 the road here at the University of Texas at Austin, is
9 one of the premier political scientists in America,
10 that says we have the soft independent system in any
11 industrialized democracy. And I agree with that.

12 REPRESENTATIVE HEFLIN: Let me ask you
13 this question real quickly: If the attorney for the
14 Northern District --

15 JOHN FUND: The U.S. Attorney for the
16 Northern District of law.

17 REPRESENTATIVE HEFLIN: The attorney for
18 the northern district, that's right, if those guys
19 won't prosecute a case, they're not elected.

20 JOHN FUND: That should tell you
21 something.

22 REPRESENTATIVE HEFLIN: They're hired.

23 JOHN FUND: That should tell you
24 something.

25 REPRESENTATIVE HEFLIN: That ought to be



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1 prosecuted or they should be photo ID.

2 JOHN FUND: No. This is the lowest
3 priority on their staff of things to do, for obvious
4 reasons.

5 It's not a violent crime. There's also
6 political controversy attached to this. That's the
7 reason why preventing this in advance is so important.

8 Once you have the vote cast and thrown in
9 a pile of secret ballots, there is no way you can pull
10 it out.

11 At least, with absentee-ballot fraud,
12 which I do agree is a problem and I do want to address
13 that, at least, with absentee-ballot fraud, when you
14 apply for absentee-ballot, when you have sacrificed,
15 in part, your right to a secret ballot, you leave an
16 evidence trail. There is much less of an evidence
17 trail with in-person voting. Much less.

18 REPRESENTATIVE HEFLIN: So you're saying
19 that we're spending our time here today on the
20 absolute lowest priority issue that we can deal with?

21 JOHN FUND: No. I am not saying that.

22 REPRESENTATIVE HEFLIN: That's what you
23 just said.

24 JOHN FUND: I am not saying that. I am
25 saying that those both are important.



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1 I'm also saying that Indiana, contrary to
2 what you have read, addressed absentee-balloting and
3 addressed in-person voting.

4 You heard about the Voter ID law. You did
5 not hear about the absentee-ballot. Perhaps you will
6 not hear about it until he's testified.

7 I'm saying you could do both. You should
8 do both. Do you have to do them at the same time? I
9 don't necessarily think so but I think you should do
10 both.

11 By the way, Debra Danberg, who used to
12 chair this committee, was very concerned about voter
13 fraud in this state. I interviewed her.

14 In fact, she was very upset because there
15 were senior citizens' groups in this state who did not
16 stand up for the fact that there were senior citizens
17 being victimized by voter fraud.

18 And I do have the legislature, in part,
19 under Democratic leadership and under Republican
20 leadership, did address some of those absentee-ballot
21 voter concerns.

22 You already have visited the issue, in
23 part. I think you need to do more.

24 REPRESENTATIVE HEFLIN: Yes. I agree.

25 CHAIRMAN TODD SMITH: Any questions?



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1 Representative Anchia.

2 REPRESENTATIVE ANCHIA: Isn't it true that
3 you can board a plane without ID?

4 JOHN FUND: Yes. It's a very complicated
5 procedure and I have done it, and I would not want to
6 visit it anymore.

7 REPRESENTATIVE ANCHIA: But there's a
8 secondary opportunity for those who want to board a
9 plane without an ID, correct?

10 JOHN FUND: Well, do you know how well
11 advertised that is?

12 REPRESENTATIVE ANCHIA: Well --

13 JOHN FUND: Ask the people in this room if
14 they know about that.

15 REPRESENTATIVE ANCHIA: But --

16 JOHN FUND: Ask them.

17 REPRESENTATIVE ANCHIA: But you pointed
18 out -- I see a bunch of hands that are raised in the
19 back of the room.

20 But you pointed out that you couldn't get
21 on a plane but, in fact, you can, correct?

22 JOHN FUND: Yes, you can.

23 REPRESENTATIVE ANCHIA: Okay.

24 JOHN FUND: But the federal government
25 does not advise you of it at all. They discourage



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1 that.

2 REPRESENTATIVE ANCHIA: Right, but the
3 point is you represented that you couldn't, but you
4 can. And you can rent a movie without a photo ID,
5 right?

6 JOHN FUND: I don't know that.

7 REPRESENTATIVE ANCHIA: At Blockbuster,
8 for example, you can do it? You can rent a movie at
9 Blockbuster with just your Voter Registration
10 Certificate, right?

11 JOHN FUND: You cannot rent a video at
12 many companies.

13 REPRESENTATIVE ANCHIA: Okay. Okay. Let
14 me ask you: You wrote an article entitled democracy
15 in peril. I haven't had a chance to read your book.
16 I'd love a copy if you're handing them out.

17 September 13, 2004, -- do you remember
18 that article?

19 JOHN FUND: I write 120 articles a year.

20 REPRESENTATIVE ANCHIA: I will eventually
21 remember it as you recall it.

22 REPRESENTATIVE ANCHIA: It appeared in the
23 National Review. September 13, 2004, "Democracy in
24 Peril. America's Election Problems."

25 JOHN FUND: I don't recall that report. I



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1 write for the Wall Street Journal.

2 REPRESENTATIVE ANCHIA: In the article you
3 talked about problems in our election systems and you
4 talked about strap (inaudible) from any local elected
5 offices.

6 JOHN FUND: Yes.

7 REPRESENTATIVE ANCHIA: From the local and
8 elected offices.

9 JOHN FUND: Yes.

10 REPRESENTATIVE ANCHIA: Voter ignorance.
11 Lackadaisical law enforcement and a shortage of
12 trained volunteers.

13 JOHN FUND: Those are all problems.

14 REPRESENTATIVE ANCHIA: You talked about
15 the voter law and that it imposed fraud from the rules
16 on states requiring driver's license bureaus to
17 register anybody applying for licenses, correct; is
18 that right? .

19 You talked about illegal absentee-ballot.
20 You talked about bribing homeless people with
21 cigarettes.

22 Which of those scenarios would be fixed
23 under the Fraser Bill? The bill before us today?
24 Have you read the bill?

25 JOHN FUND: I read several Executive



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1 Summaries. Have I read every single --

2 REPRESENTATIVE ANCHIA: Have you read the
3 bill.

4 JOHN FUND: The entire bill?

5 REPRESENTATIVE ANCHIA: Yes.

6 JOHN FUND: No, I have not read the entire
7 bill.

8 REPRESENTATIVE ANCHIA: Okay. But do you
9 know --

10 JOHN FUND: I have read long Executive
11 Summaries, though.

12 REPRESENTATIVE ANCHIA: Based on your
13 reading of the Executive Summaries, do you have a
14 sense that any of the issues that I articulated that
15 you brought up in Democracy in Peril would be solved
16 by that bill?

17 JOHN FUND: I support a full range of
18 election measures that go far beyond this bill.

19 REPRESENTATIVE ANCHIA: Do you support --

20 JOHN FUND: Excuse me?

21 REPRESENTATIVE ANCHIA: Do you support
22 them in isolation or comprehensively?

23 JOHN FUND: Both. I want to get there as
24 fast as we possibly can.

25 REPRESENTATIVE ANCHIA: Okay.



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1 JOHN FUND: Whether it's piecemeal or
2 comprehensively, I want to get there.

3 REPRESENTATIVE ANCHIA: And if it's a
4 situation like 12 nuns being disenfranchised -- that
5 doesn't give you cause for pause.

6 JOHN FUND: Well, I actually interviewed a
7 couple of those nuns.

8 REPRESENTATIVE ANCHIA: Okay.

9 JOHN FUND: And one of those nuns admitted
10 to me that it was a stunt that they were trying to
11 discredit the law.

12 REPRESENTATIVE ANCHIA: Was she an
13 American citizen?

14 JOHN FUND: Yes.

15 REPRESENTATIVE ANCHIA: Was she of age?
16 Was she of age to vote?

17 JOHN FUND: But what --

18 REPRESENTATIVE ANCHIA: But was she
19 otherwise competent to vote?

20 JOHN FUND: Representative Anchia, she
21 wanted not to vote.

22 REPRESENTATIVE ANCHIA: Was she competent
23 to vote?

24 JOHN FUND: Yes. But she --

25 REPRESENTATIVE ANCHIA: Did she vote a



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1 provisional ballot?

2 JOHN FUND: Yes. Representative Anchia,
3 she wanted not to vote that day.

4 REPRESENTATIVE ANCHIA: Did you interview
5 the other 11?

6 JOHN FUND: I interviewed two of the nuns.

7 REPRESENTATIVE ANCHIA: Did you interview
8 any of the 34 people in Marion County.

9 JOHN FUND: I tried to. I couldn't get
10 the names.

11 REPRESENTATIVE ANCHIA: Okay.

12 JOHN FUND: Because --

13 REPRESENTATIVE ANCHIA: Going back to my
14 first question: Do you think it's a good result if
15 people like that are disenfranchised? If any American
16 is disenfranchised by a piecemeal approach to Voter
17 ID?

18 JOHN FUND: I believe disenfranchisement
19 comes in two forms: One, we fought a long struggle in
20 the civil rights era so that people would not be
21 forced to take poll tests, or take literacy tests or
22 be otherwise intimidated or prevented from voting.
23 That is disenfranchising the voters and that is wrong.

24 It is also disenfranchisement if your
25 civil rights are violated because your vote is diluted



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1 or cancelled out by someone who shouldn't be voting,
2 who's voting twice or doesn't even exist. That is
3 also disenfranchisement.

4 And by the way, that is not my opinion.
5 The Supreme Court of the United States of America gave
6 a unanimous decision in which they vacated the
7 decision of an Arizona court which blocked that
8 state's photo ID law in 2006.

9 It said it is disenfranchisement if
10 people's votes are cancelled out or deleted by people
11 who are voting and shouldn't voter impersonation or
12 voter fraud.

13 REPRESENTATIVE ANCHIA: Are you aware of
14 any voter impersonation cases in Texas?

15 JOHN FUND: Specifically in Texas?

16 REPRESENTATIVE ANCHIA: Yes.

17 JOHN FUND: I have not interviewed people
18 who personally told me they committed voter
19 impersonation in Texas.

20 REPRESENTATIVE ANCHIA: But, sir, are you
21 aware of any cases?

22 JOHN FUND: I'm aware people who have
23 claimed such --

24 REPRESENTATIVE ANCHIA: Are you aware of
25 any documented cases?



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1 JOHN FUND: No.

2 REPRESENTATIVE ANCHIA: Okay. Thank you,
3 Mr. Fund.

4 JOHN FUND: Thank you.

5 I have to leave and I apologize.

6 CHAIRMAN TODD SMITH: Thank you, Mr. Fund
7 and thank you for coming and we appreciate it.

8 JOHN FUND: Thank you.

9 CHAIRMAN TODD SMITH: And I'm sorry you
10 didn't get the full allotment of time.

11 REPRESENTATIVE VEASEY: Mr. Chairman, we
12 wanted to state on the record and we wanted Mr. Fund
13 to hear this before he went out the door, that
14 Mr. N.D. Yang had expressed that he supported the
15 Baker Commission.

16 And like I said earlier, the Baker
17 Commission clearly states that you cannot do Voter ID
18 right now until you have universal support.

19 So we need to be clear because for him to
20 invoke the name of Andrew Young supporting Voter ID is
21 really quite a stretch there.

22 CHAIRMAN TODD SMITH: He does recommend it
23 along with, I guess, the expansion of real ID, and so
24 we gotta figure out what we're going to do in light of
25 the fact that we don't have real ID. But that's



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1 right. I think that's correct.

2 At this time, the chair will call Justin
3 Leavitt from the Brennan Center for Justice at New
4 York University School of Law to testify against
5 Senate Bill 362.

6 MR. LEAVITT: Thank you, very much,
7 Chairman.

8 CHAIRMAN TODD SMITH: Thank you. Please
9 state your name and who you represent.

10 JUSTIN LEAVITT: My name is Justin
11 Leavitt. I'm here on behalf of the Brennan Center for
12 Justice at NYU School of Law.

13 The reference was correct earlier and I
14 want to correct you, Mr. Chair, Mr. Vice-Chair,
15 members of the committee, very much for inviting me
16 here to testify.

17 I agree both that you have an issue that's
18 caused much debate here in front of you. And I think
19 it's very important to take the tact that you set out
20 so early of trying to get at the real facts behind
21 what's at issue here.

22 I have written testimony that I've made
23 available to you all. We've also published
24 documentation, reports I'm happy to make available. I
25 didn't bring enough copies for the committee here



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1 today. And for that I apologize.

2 I'm going to keep my remarks as short as I
3 possibly can and leave you with written testimony.
4 And any questions that you wish to ask, including, I
5 may be the right person to respond to some of the
6 incidents that you brought up before with
7 Ms. Trautman, chairman. So I'm happy to address any
8 of those as you wish.

9 As you mentioned, I'm Justin Leavitt. I'm
10 counsel at Brennan Center for Justice at NYU School of
11 Law. We are self-identified as progressive, but we
12 are vigorously non-partisan and I am strictly here in
13 a non-partisan capacity.

14 The Brennan Center does public policy and
15 research and legal advocacy. We focus on fundamental
16 issues of democracy and justice and we think
17 respectfully that you have one before you here today.

18 Our method, our trade is to focus on
19 evidence and to go back to the facts that have been
20 established and try and root all of our recommendation
21 ands all the policies we advocate and the basis of
22 those facts.

23 We emphasize the factual research because
24 we believe the best policy is grounded in careful cost
25 analysis benefit analysis.



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1 And just like you would in starting on a
2 construction project and make a page you wouldn't
3 start a construction project or make a major purchase
4 until you were sure that the benefits outweigh the
5 costs, the same is true in election policy.

6 And particularly for Texas, Section five
7 of the voting rights act requires such an analysis.
8 This hearing today is about proposing restrictions on
9 the way voters can and have traditionally identified
10 themselves at the polls in order to vote.

11 And with respect I'm here to testify
12 against the proposal because I believe the costs do
13 outweigh the benefits, that this legislation you all
14 are considering imposes far more costs than the
15 problems it fixes others will talked to at great
16 length about some of the costs that this legislation
17 may impose.

18 I'd like to focus, if he can in a limited
19 time on the negotiable benefits it provides.

20 In particular, legislation requiring a
21 restricted form of ID in order to vote at the polls
22 gets in only one sort of problem. It's only designed
23 to get at one sort of problem. And that is
24 impersonation fraud. People pretending to be someone
25 else when they show up at the polls.



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1 We have documents at the Brennan Center's
2 document allegations of all kind of fraud. Some of
3 them are reports that we validate, they actually
4 turned out to be true. Many reports that we've
5 debunked that turn-out not to be true when you look at
6 the real facts.

7 Impersonation fraud is special in our
8 research. It's the only sort of fraud that I believe
9 you could possibly address.

10 And what's most notable about it is how
11 strikingly rare it is. Not just to prosecute, but to
12 find, to discover, to report the fact that its
13 existence at all is to notably rare.

14 Now, some attack this research that we've
15 done saying that we're denying that fraud exists. And
16 I want to be perfectly, absolutely clear: That there
17 are some kind of fraud out there.

18 You've mentioned some. Mr. Fund mentioned
19 some. Other witnesses will, no doubt, mention others.
20 It's more rare than people believe because many
21 reports are either sensation lift or sloppy. That
22 confuse fraud with clerical error. But sadly it does
23 occur. People still do buy votes.

24 They still do pressure voters in nursing
25 homes. They still do commit fraud and unfortunately



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1 large amounts of it using absentee-ballots.

2 They did in the 1970s, use party boss
3 systems to break the law using insiders. The
4 longstanding Brooklyn scheme that Mr. Fund mentioned.

5 What they don't do in any significant
6 number is commit the sort of fraud that restrictive ID
7 laws, like the one before you that could possibly fix.

8 At the end of the day, yes, it has
9 happened. There have been a tiny handful of
10 substantiated cases out of hundreds of millions of
11 ballots. Americans are struck and killed by lightning
12 far more often.

13 Now, some, including Secretary Rokita and
14 including Mr. Fund, has said there are only a few of
15 these reports because this sort of fraud is hard to
16 find.

17 But even without eyewitnesses and there
18 are often eyewitnesses, there will often be a victim.
19 And there will always, in every single case, be a
20 paper trail, including poll book signature and other
21 records at the polls.

22 That is to say in this case, there really
23 is a dead body every time because you can go back and
24 look at the poll books to find out if someone else has
25 signed in for that person and whether it was a



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1 mistake, someone above or below in the records, or it
2 was an entirely different individual.

3 We've done that research and so we know
4 it's possible to trace after the fact.

5 And if you want to swing an election,
6 you've gotta do this many times, which means many
7 chances for someone to cry foul.

8 The hunt for this fraud has been on and
9 the major national issue at the same time that federal
10 law enforcement made it a priority and the at the same
11 time that private actors are equipped and extremely
12 motivated to find it when it happens.

13 There were lots and lots and lots of
14 people looking. And so if this fraud happened with
15 any frequency whatsoever, over most of the last
16 decade, you'd expect the phones to have been ringing
17 off the hook. Not prosecutions. Just reports
18 somebody stole my vote by pretending to be me at the
19 polls.

20 Instead it was barely a ring. Every year
21 there are far more reports of UFO sightings than of
22 fraud that an ID could prevent.

23 This exceptionally rare phenomenon has
24 been used to drive policy that unfortunately creates
25 far more real problems than it solves. And



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1 restrictive ID recalls are one good example. They
2 don't solve real problems but they do create them.

3 When you start shutting down the rules
4 that voters can say that they are who they say they
5 are: You start shutting out eligible voters. Real
6 people.

7 Most eligible voters we know have ID and
8 have it handy, even photo ID. But many do not.
9 Disproportionately elderly and minority citizens.

10 I was behind one such senior citizen in
11 line at the airport on the way out here. She did not
12 have ID. She didn't have photo ID and she didn't have
13 other backup ID. And she went through the very same
14 process that Representative Anchia asked Mr. Fund
15 about. The secondary screening it took. I know
16 because I waited for her.

17 It took 15 minutes. She went through.
18 She had the x-ray scan. She got through and was able
19 to get onto the plane. And that's because private
20 industry and the federal government all recognize that
21 there are some citizens out there in the 21st century
22 who simply don't have some forms of ID and they make
23 accommodations for that.

24 It is not easy. It's much easier to live
25 in modern society if you have an ID, that's true and



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1 Andrew Young believed that's true. And that's right.
2 But we understand private entity understand and the
3 government has responsibility to make sure that when a
4 vote -- when a right is provided for each, as voting
5 is, that everyone can be validly accommodated have
6 that every eligible citizen will have that opportunity
7 to exercise that right, just like the woman in front
8 of me in line at the airport.

9 Making things more difficult at the polls,
10 by the way, also increases the burden on poll workers
11 and on election officials. More restrictive ID means
12 more confusion at the polls. And for those who don't
13 have ID with them, more anger.

14 It also means more provisional ballots,
15 right in the most hectic period of the election cycle.

16 And your question, Mr. Chair, about
17 provisional ballots in Marion County is it's spot on
18 in that respect. It is a concern and should be a
19 concern.

20 I see that I'm coming down to the end of
21 my time have I want to address two things if I can.

22 One is the argument, and we heard it
23 before, that asking for photo ID will increase
24 confidence in the system.

25 And I want to call special attention to



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1 the study have the only study to do, empirical
2 evidence, they went out and asked voters who live in
3 states with photo ID laws and live in states without
4 photo ID laws, do you feel more confident in the
5 elections in your state.

6 And the voters responded with unmistakable
7 equanimity. It did not have an effect. There was no
8 statistically correlation. If you believe they're
9 flawed, you're going to believe they're fraud whether
10 somebody asks you for an ID or not.

11 And if you don't believe there's fraud you
12 don't believe there's fraud, whether somebody asks you
13 for an ID. When people say it makes the voters feel
14 more confident, a study has been done and that's been
15 shown not to be true.

16 The other instance that I want to talk
17 about and I didn't want to spend all my time on it,
18 but because the Brennan Center got so popular even
19 before I got up here, I did want to mention that I
20 actually agree with you chairman on turn-out studies
21 and the limitations on looking at turn-out to see how
22 these things effect voters.

23 I believe another witness will mention
24 this in much more detail. I believe it's up to you.
25 Two more sentences on this particular topic.



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1 CHAIRMAN TODD SMITH: If you agree with
2 me. Go, go ahead.

3 JUSTIN LEAVITT: Absolutely. It is part
4 of why the Brennan Center has not done a study on how
5 photo ID effects turn-out, in part, because we agree
6 there are many limitation necessary these sorts of
7 studies. You need a lot of variables over a lot of
8 time in order to really come up with a really
9 conclusive answer is on how turn-out is effected in
10 one way or the other.

11 That's absolutely correct, and there will
12 be other witnesses who, I believe, will testify to
13 that in much more detail.

14 What we have done is something we think
15 more reliable is we've asked the citizens. We've done
16 a survey. And there are others, we're not the only
17 ones who have done the survey.

18 We've asked citizens, do you have X, Y and
19 Z sort of ID. And the answer was, most do but a
20 disturbing number don't. And we're very concerned
21 that anyone, Texas or otherwise, would take action to
22 solve a problem that doesn't exist, but that actually
23 creates a problem for all of those citizens who told
24 us, we don't have what you're asking us to get.

25 CHAIRMAN TODD SMITH: Okay. Let me just



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1 say, thank you, I appreciate the spirit of your
2 testimony. That's far closer to being the kind of
3 oppositional testimony that I expected and I was a
4 little surprised by Ms. Trautman's allegations that
5 there is no evidence of any kind of voter fraud of any
6 kind.

7 You do not agree with her on that; is that
8 correct?

9 JUSTIN LEAVITT: I do not agree with her
10 on that. That is correct.

11 I don't know about Harris County in
12 particular. I have no experience in Harris County.

13 CHAIRMAN TODD SMITH: I understand that
14 the but the fact is that there is substantial amount
15 of evidence of voter fraud, but your position is that
16 only a handful of substantiated cases exist with
17 regard to impersonation; is that correct?

18 JUSTIN LEAVITT: That's correct.

19 CHAIRMAN TODD SMITH: There's an extensive
20 body of evidence to support the notion of fraud with
21 regard to absentee-ballots?

22 JUSTIN LEAVITT: That's correct.

23 CHAIRMAN TODD SMITH: And so while we're
24 on that subject: Do you have any suggestions on how
25 this committee might be able to get at the area of



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1 fraud where there is no disagreement that is out there
2 and is a major problem? Any suggestions on what we do
3 to deal with that?

4 JUSTIN LEAVITT: It is a very sticky
5 issue. Federal law actually provided one way to get
6 at that and I believe that the rate of
7 absentee-ballots has dropped substantially since 2002.

8 The Help America Vote Act of 2002 requires
9 and Texas, I understand has implemented, a system that
10 in some ways catches absentee-ballot fraud. When you
11 register to vote you're required to give information
12 over.

13 The Secretary of State will try to match
14 that information up to other government lists. If you
15 don't match, then you have to submit some form of
16 identification of the same identification that is now
17 permitted at the polls understand Texas law.

18 CHAIRMAN TODD SMITH: Did you identify a
19 state that's currently doing that?

20 JUSTIN LEAVITT: I believe every state,
21 including Texas --

22 CHAIRMAN TODD SMITH: Okay.

23 JUSTIN LEAVITT: -- is currently doing
24 that.

25 CHAIRMAN TODD SMITH: Okay.



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1 MR. LEAVITT: And so another way to get at
2 --

3 CHAIRMAN TODD SMITH: I'm obviously
4 looking for something that we do not currently do
5 because we've got dead people voting.

6 Even if you presume that all those people
7 are doing it by way of absentee-ballots, which I don't
8 know that we can, but even if you did that, you know,
9 you how can we prevent that?

10 JUSTIN LEAVITT: Two items really quickly.

11 One, I'm not sure that you do have dead
12 people voting in anywhere near the numbers that are
13 often cited.

14 You mentioned earlier a Georgia study in
15 the Atlanta Journal Constitution. That one's
16 notorious. It came out in 2000 and said 5,400 dead
17 people voted.

18 They actually did an investigation have
19 the way they came up with that which were a record
20 matching system that we've shown repeatedly to be
21 fraud.

22 We mentioned one person that the reporter
23 was dead certain had voted while deceased. And they
24 went back and -- that's why I mentioned the poll book
25 signatures.



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1 They went back and they looked at the poll
2 book signatures and it's not the same guy.

3 CHAIRMAN TODD SMITH: So what is the
4 evidence that you agree is out there that is extensive
5 with regard to absentee-ballots?

6 JUSTIN LEAVITT: You have situations like
7 in Indiana, where there was some absentee vote,
8 coercion of absentee-ballots, where there was people
9 applying for absentee-ballots. That was before 2002.
10 That was before the Help America Vote Act was
11 implemented.

12 In Miami, the same thing in 1997, before
13 the Help America Vote Act was implemented. The Help
14 America Vote Act was actually done quite a bit to get
15 at that.

16 But the other way you can avoid more
17 absentee-ballot fraud is to make it as easy as
18 possible while still maintaining the security of
19 voting at the polls.

20 That is the harder you make it to vote at
21 the polls, the more people you're going to get drive
22 en to the absentee-ballot system. And the more people
23 you're going to lay out there into the system where
24 it's much harder to actually control against fraud.

25 CHAIRMAN TODD SMITH: Okay.



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1 MR. LEAVITT: At the polls you actually
2 have a reasonably set reasonable set of safeguards,
3 including people showing up in-person and swearing,
4 including signing in, including your being able to see
5 their face.

6 Including the idea that as you mention the
7 ID that Texas currently requires, either a
8 registration certificate or one of the broad means of
9 documentary ID.

10 CHAIRMAN TODD SMITH: Okay. You mentioned
11 the study that you did do, and it's 2.6, 2.9 percent.
12 You know the study what I'm talking about?

13 MR. LEAVITT: There are several. The one
14 that we did --

15 CHAIRMAN TODD SMITH: I just want to get
16 your specific answer.

17 Was that from comparing in Indiana that
18 has no state identification that has no identification
19 requirement? What's what was the comparison?

20 MR. LEAVITT: We have not done a
21 comparison. What we've done is we have --

22 CHAIRMAN TODD SMITH: What is that two
23 point something percent figure? What was that?

24 JUSTIN LEAVITT: I believe that was a
25 study done by -- it's possible it was Al Foretto



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1 CHAIRMAN TODD SMITH: It was comparing
2 what to what?

3 MR. LEAVITT: It was comparing -- I'm
4 sorry. That study are was not a comparison study
5 state to state.

6 I'm going to leave that question, if I
7 may, for one of the other witnesses who will know this
8 better.

9 CHAIRMAN TODD SMITH: Okay.

10 MR. LEAVITT: I am not sure.

11 CHAIRMAN TODD SMITH: Okay.

12 JUSTIN LEAVITT: We have done studies of
13 the rate at which citizens have or don't have this,
14 not the turn-out before or after a particular
15 election.

16 CHAIRMAN TODD SMITH: Okay. You agree
17 with me that in terms of the effect of Indiana versus
18 some common standard, I thought that the Brennan study
19 compared it to a no-identification state. That their
20 study was, kind of, all over the map. Some say it
21 increased turn-out. Some say it decreased turn-out.

22 JUSTIN LEAVITT: Yes.

23 CHAIRMAN TODD SMITH: But you agree with
24 me that there isn't any evidence of any kind, nothing,
25 no study, nothing substantiated to any degree that



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1 would suggest that a change from current law in Texas
2 where we already require identification, either one
3 photo or one non-photo -- when those people just
4 layout a photo to change in the law where you didn't
5 have the photo which was provided free or you back it
6 up with two forms of non-photo, a Voter Registration
7 card or some form of additional document, you agree
8 with me that there's not any study of any kind that
9 will indicate that that would suppress poor,
10 uneducated and minority voters? Right? You agree
11 with me?

12 MR. LEAVITT: I can't agree with you, in
13 part, because I don't know all of the details of what
14 was submitted in Arizona.

15 Arizona has a system where you submit one
16 photo ID or two forms of non photo ID.

17 CHAIRMAN TODD SMITH: Okay. You're not
18 aware of any?

19 JUSTIN LEAVITT: Correct.

20 CHAIRMAN TODD SMITH: Is that correct?

21 JUSTIN LEAVITT: That's correct.

22 CHAIRMAN TODD SMITH: Okay.

23 I want you to just explain to me in a
24 little more detail and then I want other members to
25 ask questions.



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1 You admit that it's hard to find in terms
2 of hard to prove evidence of voter impersonation?

3 JUSTIN LEAVITT: It won't be hard. It
4 will be hard to prosecute but I don't believe it will
5 be hard to find.

6 CHAIRMAN TODD SMITH: Okay. Hard to
7 prosecute.

8 And with regard to voter fraud -- you
9 agree with me that looking at the extent of
10 prosecution is really not the most accurate way to try
11 to determine the extent to which it occurs in you
12 agree with that, don't you?

13 JUSTIN LEAVITT: Yes.

14 CHAIRMAN TODD SMITH: Now, the absence of
15 prosecution does not mean that it does not occur? But
16 on the other hand, I will grant you that the absence
17 of prosecution doesn't mean that it does occur,
18 either? You agree with that, right?

19 JUSTIN LEAVITT: I think that's accurate.
20 I think there are better metrics, that I know whether
21 it does or does not occur.

22 CHAIRMAN TODD SMITH: All right. And when
23 you say there's always a paper trail at the polls,
24 help me understand that.

25 Because my understanding is that and I may



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1 be wrong, that with regard to absentee-ballot, you've
2 got a much better paper trail because you have an
3 envelope. You have an address. You have a stamp.

4 Whereas at the poll, you primarily have a
5 signature, whereas on the absentee-ballot, you have
6 that, plus you have the envelope and a stamp and the
7 typewriter that typed the information on the outside
8 of the envelope, well, I guess most of the time that
9 is a state issued document.

10 So I guess you have a stamp and you have a
11 signature and you have an address.

12 Tell me why -- is it true that that paper
13 trail is more extensive than the paper trail at the
14 ballot office?

15 MR. LEAVITT: That paper trail is mildly
16 more extensive, but the paper trail at the polls is
17 more than enough to tell you did somebody vote in that
18 person's name are or not.

19 CHAIRMAN TODD SMITH: Okay.

20 MR. LEAVITT: And that's what we focused
21 on.

22 CHAIRMAN TODD SMITH: Okay. So because
23 there is a more significant paper trail with regard to
24 absentee-ballot, you would agree that it is, at least,
25 marginally easier to identify and prosecute than it is



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1 at the polls?

2 MR. LEAVITT: Yes.

3 CHAIRMAN TODD SMITH: Okay.

4 Representative -- hands up. I'm trying to be fair
5 here.

6 Anchia.

7 REPRESENTATIVE ANCHIA: I want to be real
8 careful when we talk about dead people voting,
9 Mr. Chairman.

10 I don't know that there are any studies
11 post-HAVA that show that that's happening at any rate
12 greater than the rate of voter impersonation, which is
13 pretty small can you talk about why dead people voting
14 is hard. And let's leave the obvious because they're
15 dead out.

16 But let's talk about why it's hard to vote
17 for a person when he may be deceased using their
18 identity. Let's talk about the mechanics of that and
19 then let's talk about the mechanics of HAVA and how
20 it's implemented in Texas.

21 Are you aware of how its implemented here?

22 JUSTIN LEAVITT: I believe so.

23 REPRESENTATIVE ANCHIA: Okay. And if you
24 can speak to that, that would be helpful. Because I
25 don't want the impression to be left with the media or



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1 the audience or the members of the committee that this
2 is happening on a large scale post-HAVA.

3 JUSTIN LEAVITT: No. That's entirely
4 right.

5 And one clarification, if I may: That the
6 reports that have been done post-HAVA, of which I'm
7 aware, deal with allegations that dead people have
8 been found on the rolls or that dead people have
9 voted.

10 And when there's been follow up, I know
11 there's a notorious case, the Texas Watchdog blog and
12 then the Dallas Morning News, that when there's been
13 follow up, the follow-up have actually been that dead
14 people have not voted.

15 That is, there are lots of claims, but the
16 claims actually turn-out, for the same reasons as in
17 Georgia, not to pan out on photo investigation.

18 So you'd ask: How is it possible or how
19 does Texas and other states safeguard against this?

20 When you register to vote, you have to
21 submit your driver's license or Social Security
22 number, and that information is matched up from place
23 to place with Department of Public Safety here in
24 Texas and with Social Security Administration records.

25 So if I'm a new voter and I am submitting



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1 a ballot in the name of a dead person, then I have to
2 register in the name of that person. The information
3 has to be cross-referenced.

4 And by the way, Motor Vehicles and DPS
5 would most likely know if I'm deceased. If that
6 doesn't square up, if that doesn't match or if it
7 returns, hey, this persons dead, then I have to submit
8 a document, just like the documents that Texas
9 currently requires at the polls in that person's name.

10 And that's, actually, fairly difficult,
11 or, at least, it takes a great degree of energy in
12 order to fake.

13 And so there aren't a lot of people
14 registering in the names of neural dead people and
15 voting since the Help America Vote Act.

16 There also aren't a lot of people who are
17 voting in the names of people who have been dead on
18 the rolls for a long time.

19 HAVA also requires counties and the state
20 to screen their registration lists against the list of
21 people who have recently died. They get those lists
22 from Social Security. They get those lists from, I
23 believe, county departments of health.

24 And as far as I can tell, many states have
25 I'm not sure how Texas' compliance with this has been,



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1 I just don't know but many states are finding it
2 entirely impossible to get dead people off of the
3 roles fairly quickly after they actually pass on.

4 And so for those people, as well, if they
5 attempt to vote, they're no longer registered.
6 They're no longer on the rolls and that ballot is
7 automatically flagged or at the polls they won't be
8 able to cast a regular ballot.

9 So the Help America Vote Act provides in
10 each of these ways have. New people getting on and
11 old people coming off. A good screen for those who
12 are no longer eligible.

13 REPRESENTATIVE ANCHIA: Would you be
14 surprised if the latest State Auditor Report that
15 scrubbed the HAVA database found that there were zero
16 persons reviewed from that database who were deceased
17 who had voted?

18 MR. LEAVITT: I wouldn't be surprised at
19 all. We keep going back and finding where dead people
20 had voted and the follow-up shows that zero have
21 actually cast ballots.

22 REPRESENTATIVE ANCHIA: In fact, there
23 were 49,000 people reviewed from the list to about 23,
24 25,000 of them were deceased, which is not a
25 surprising number when you consider we've got 13



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1 million people on the list and people do die during
2 the course of the year. Registered voters do die at
3 .04 percent.

4 So about 23,000 people who are deceased
5 and possible felons were scrubbed from the list.

6 And the number who have voted were zero.

7 JUSTIN LEAVITT: That's consistent with
8 what they found in other states.

9 REPRESENTATIVE ANCHIA: And I believe the
10 instance or the frequency with which we update
11 statistics are, in some cases, weekly and other cases
12 monthly under the law here in Texas. I'll confirm
13 that with the Secretary of State's office, but we
14 appreciate your testimony. Thank you.

15 CHAIRMAN TODD SMITH: Representative
16 Bonnen.

17 REPRESENTATIVE BONNEN: Thank you. I
18 appreciate your comments very respectfully in opening
19 testimony of today.

20 CHAIRMAN TODD SMITH: Thank you.

21 REPRESENTATIVE BONNEN: Do you live in New
22 York?

23 JUSTIN LEAVITT: I don't actually live in
24 New York. I live in California now.

25 REPRESENTATIVE BONNEN: Even better.



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1 That's very surprising for a New Yorker.

2 I wanted to ask you some questions about,
3 again, it's an issue that I've been very curious about
4 and you visited about how there are no studies and the
5 impact the studies would have the impact that a Voter
6 ID would.

7 And what's interesting to me about that is
8 that we do have states we can look at where we can
9 just look at the numbers. I mean, we don't have to do
10 a specific study. We just look at results.

11 Are you familiar with the turn-out
12 situation in Georgia? And I want to quote some
13 numbers to you here and see if they make sense to you.

14 This is the Joelette Center on Political
15 and Economic Studies. With that Georgians saw that
16 the overall turn-out in Georgia increased 6.7 percent
17 points from the 2004 election. It was the
18 second-highest increase in turn-out of any state in
19 the country in that the black share of the statewide
20 vote increased from 25 percent in 2004, and this is
21 obviously 2008 numbers.

22 The interesting thing about that is that
23 they're talking about 25 percent. And that is, when
24 the ID law was in effect, it went up 25 percent. To
25 -- up to 30 percent in the '08 election.



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1 The interesting thing is that the African
2 American vote nationwide increased from 11 to
3 13 percent in that cycle.

4 So, I mean, does that sound logical to
5 you?

6 JUSTIN LEAVITT: It absolutely sounds
7 logical, but its sound like it has nothing to do with
8 Voter ID.

9 REPRESENTATIVE BONNEN: I think that's a
10 great statement.

11 MR. LEAVITT: Let me say two things if I
12 can.

13 One, just -- Chairman Smith asked me
14 whether I knew about the effects of particular ID
15 structure one photo ID or two non-photo IDs, and
16 that's where I'm just not aware in Arizona.

17 There are studies that show in effect a
18 disproportionate impact on those with lower income.

19 Photo ID laws, in particular, those are
20 photo ID because that's been the controversy.

21 REPRESENTATIVE BONNEN: I respect that.
22 But I'm asking you about specific, factual results
23 from Georgia.

24 JUSTIN LEAVITT: And leave, and the
25 Georgia election, this is why gauging an effective law



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1 based on turn-out is a disadvantage. The Georgia
2 election in 2008 featured an investment of resources
3 by both President Obama and by Senator McCain,
4 challenging Georgia and making it a contingent state
5 for the first time, as I'm aware, on the presidential
6 level in decades.

7 We also had -- for the African American
8 turn-out, they also had an African American caused at
9 the very top of the ticket. I would expect for the
10 African American turn-out to go through the roof in
11 Georgia.

12 REPRESENTATIVE BONNEN: Correct. Let me
13 point out, though, we're not talking about how many
14 individual numbers it went up. It's about percentage
15 increase, isn't it?

16 MR. LEAVITT: And I would argue with you.

17 REPRESENTATIVE BONNEN: I'm not arguing
18 with you. I am agreeing with you. Voter intensity
19 should have been higher. African American voter
20 should have been higher. Significant dollars would
21 have been spent on a different cycle, but to suggest
22 that they were specifically different at one point
23 versus another.

24 JUSTIN LEAVITT: And I'm not suggesting
25 that.



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1 REPRESENTATIVE BONNEN: It is interesting.
2 That's why I pointed out that the national vote
3 increased for African Americans 11 to 13 percent,
4 whereas in Georgia it went up 30 percent.

5 JUSTIN LEAVITT: And I attribute that to
6 the very specific local nature of the election.

7 The more money you spend in a local race
8 and the more intention attention you have on a local
9 race -- that can really drive turn-out.

10 REPRESENTATIVE BONNEN: Right. Let me
11 make this point, then, with two things I'd ask you to
12 consider: Clearly Voter ID did not suppress or amend
13 the vote?

14 JUSTIN LEAVITT: I'm going to make the
15 same express as Chairman Smith: We don't yet know,
16 this is why it's dangerous, whether the increase in
17 turn-out would have been 35, 40, 45, 50 percent had it
18 not been for the Voter ID law.

19 That is, we know it went up a bunch. We
20 don't know how much more it would have gone up had
21 there been no law.

22 REPRESENTATIVE BONNEN: Well, we know it
23 went up significantly compared to the national
24 average. We know that it went up significantly
25 compared to a neighboring state with no Voter ID such



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1 as Mississippi.

2 JUSTIN LEAVITT: Which was not contested.

3 REPRESENTATIVE BONNEN: Correct. But we
4 also then know by your comments, I think it's fair to
5 not concede on both sides, that -- and I'm not picking
6 a challenge here -- but Representative Anchia made the
7 comment earlier about how Texas has bad voting numbers
8 and this and that.

9 But the arguments you made were what came
10 to my mind was when Representative Anchia discussed,
11 that is, that I don't know the last time that we had a
12 November election that we've had a presidential
13 candidate spend any significant sum of money to drive
14 the election.

15 So I think you would agree with me it's,
16 kind of, fair to concede to some extent on both sides
17 that it is largely driven by who's spending the
18 dollars? Who's driving the vote? Who's making those
19 requests?

20 JUSTIN LEAVITT: That's true, but I would
21 say two things: One, you don't want to do anything.
22 I agree this is my perspective. You don't want to
23 take a step that drops your current level of
24 participation.

25 And the second thing is: You don't want



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1 to put any additional unnecessary burden on voters who
2 haven't participated thus far with the amount right
3 amount that want to come into the process.

4 REPRESENTATIVE BONNEN: And I understand
5 that.

6 JUSTIN LEAVITT: Secondly that nobody here
7 wants to put that unnecessary burden on.

8 REPRESENTATIVE BONNEN: I understand that.
9 I'm simply making a point that you're explaining the
10 Georgia turn-out numbers by the amount of money being
11 spent in Georgia. And I respect that. And I think
12 that has an impact.

13 But I do think it also helps show that
14 Voter ID clearly did not stimey that vote.

15 But I also would respectfully say that
16 then if we're going to accept that argument in Georgia
17 to some degree, not completely, but to some degree, do
18 we have to accept are the converse to that argument
19 when you look at other states, such as Texas and what
20 have you and say, well, but the vote wasn't as high as
21 we would have thought?

22 Again, if it's fair to you, it's fair to
23 me, I guess is the point I'm trying to make.

24 JUSTIN LEAVITT: And I understand the
25 point you're making. I guess I just disagree with the



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1 premise.

2 REPRESENTATIVE BONNEN: The premise,
3 you're saying the reason it went up in Georgia is
4 because they spent a lot of money on the presidential
5 election, but then when we discussed in other states
6 that wasn't inundated with presidential dollars at
7 that point you wouldn't apply there?

8 JUSTIN LEAVITT: There are probably 20 to
9 30 different factors that draw a turn-out, including
10 the weather on a particular day. And respectfully
11 you've gotta look at them. And in Georgia, you've
12 gotta look at them.

13 REPRESENTATIVE BONNEN: Well, I think we
14 do agree.

15 MR. LEAVITT: Okay.

16 REPRESENTATIVE BONNEN: I think we do
17 agree that you can't hang your hat on that being the
18 factor for it not having a negative impact in Georgia,
19 just as I can't hang my hat on it being a having a
20 negative impact or not in Texas.

21 What I'm simply saying, the arguments are
22 somewhat a friendly stand off. If you're going to use
23 it in Georgia, I suggest you ought to use it
24 elsewhere?

25 JUSTIN LEAVITT: They do have a different



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1 turn-out somewhere, but that's why we think it's so
2 important to survey eligible citizens to find out
3 who's out there who either does or does not have the
4 sort of ID you're talking about.

5 This is my primary agreement with Chairman
6 Smith.

7 REPRESENTATIVE BONNEN: Right.

8 MR. LEAVITT: Yes.

9 REPRESENTATIVE BONNEN: And I agree with
10 you. I think when you have a voter increase from,
11 Nationally speaking, with the African American
12 population from 11 to 13 percent, and then you have a
13 state that has a 30-percent increase, clearly there
14 wasn't something creating a problem.

15 Because there are other states that
16 probably had significant funds being spent to
17 encourage turn-out that didn't even have that kind of
18 a turn-out?

19 MR. LEAVITT: I think the record on what
20 caused the turn-out and what did not cause the
21 turn-out and where it might have been is probably
22 going to have to wait for another couple of cycles
23 until we get another data on how to hash out -- bonus
24 I think that's a fair comment to make if we're going
25 to hold that comment true in all scenarios.



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1 MR. LEAVITT: Thank you.

2 CHAIRMAN TODD SMITH: Representative
3 Brown.

4 REPRESENTATIVE BROWN: Thank you,
5 Mr. Chairman.

6 I'd like to go back to something that you
7 were explaining awhile ago about when you -- okay.

8 Let me put it this way: Are you aware
9 that when you send in a request for a change to a
10 Voter Registration card and your information is not
11 complete, for one reason for another -- oh, well, the
12 main thing is you were saying that you fill in your
13 Social Security number and your driver's license
14 number.

15 Are you aware that if you leave both those
16 boxes blank and send it in, they will send it back to
17 you saying that it's insufficient information? If you
18 did it a second time, they will send you another
19 letter. If you did it a second time, they
20 automatically register you?

21 Are you aware of that in Texas?

22 MR. LEAVITT: I'm glad to hear that's the
23 case. That's one interpretation of federal law and
24 that is one of the interpretations that we actually
25 advocate for.



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1 REPRESENTATIVE BROWN: Really?

2 JUSTIN LEAVITT: However, for those
3 people, federal law requires that you have to show
4 some form of documentary I.D. at the polls.

5 REPRESENTATIVE BROWN: Okay. All right.

6 JUSTIN LEAVITT: From leave. From the
7 broad list --

8 REPRESENTATIVE BROWN: Okay. All right.
9 Are you aware in that that's a letter that's sent back
10 telling you that you have insufficient information and
11 you cannot be registered, that that is used as a form
12 of identification? That letter can be presented?

13 The Secretary of State is here in the
14 room, and she verified this the other day when she
15 testified before us. So to me, that is the real.

16 JUSTIN LEAVITT: I'm not aware of how
17 often that's done at all. I was not aware that that
18 was the case under Texas law.

19 REPRESENTATIVE BROWN: Yes, it is.

20 One other thing. I just think that --
21 we're accused so much of trying to suppress the vote,
22 That that's the only reason that we're pressing for
23 photo IDs and trying to suppress the vote.

24 But wouldn't you agree with me that in the
25 situation that was just cited a while ago, it was a



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1 30-percent increase in turn-out, in a state that has
2 photo ID, that we are really a miserable failure if
3 that's our goal, going into these states and
4 supporting photo ID, if the turn-out is that much,
5 that we are really failing miserably?

6 MR. LEAVITT: I do believe that some who
7 advocate this, and I certainly wouldn't accuse any
8 member of this committee of being in that camp.

9 REPRESENTATIVE BROWN: Thank you.

10 MR. LEAVITT: But there are some who do
11 believe that this is a means to suppress the vote,
12 however successful, and I believe that more people
13 sincerely believe that they are trying to combat a
14 problem that's out there.

15 It's just that I happen to believe that
16 they're mistaken.

17 In the Georgia case, for example --

18 REPRESENTATIVE BROWN: I asked you: Do
19 you agree with me that we're a miserable failure in
20 such states when the turn-out goes up that
21 significantly?

22 MR. LEAVITT: The problem with the
23 turn-out study is you don't know how much more it
24 would have gone up if that idea hadn't been in place.

25 REPRESENTATIVE BROWN: But when you're



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1 comparing it to other states with an 11-percent
2 increase, it was such a significant increase. It was
3 still and you still won't agree with me?

4 JUSTIN LEAVITT: I'm afraid I wouldn't. I
5 mean, Georgia had many problems before this election.
6 Their turn-out rate was not that spectacular leading
7 up to this election.

8 To find an improvement, I think we can all
9 be happy about the improvement, based on this election
10 and the fact that more eligible Georgians are voting.
11 I celebrate that.

12 I just simply don't know how many more
13 people would have been able to vote if that law or any
14 other law hadn't been in place.

15 CHAIRMAN TODD SMITH: And I think I've
16 already made it clear that I think we're on the same
17 page on that issue.

18 I am sort of fabulously unimpressed with
19 either sides' arguments, especially that this marginal
20 change in our states law, in our state, comparing what
21 we currently do to what the Senate has proposed doing.
22 I am fabulously unimpressed with either sides argument
23 that this legislation would in any material way either
24 enhance or suppress turn-out.

25 And you know, we have agreed that there's



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1 not any evidence of any kind that is credible in any
2 way that would support either of those allegations at
3 this point, right? You would agree with that?

4 JUSTIN LEAVITT: I would think the
5 turn-out studies have been inconclusive and that I
6 would agree.

7 CHAIRMAN TODD SMITH: And those studies
8 have all been based on a comparison between one thing
9 and another, that is far more stark in its contrast
10 than what we're proposing here in Texas, if we start
11 with the Senate Bill.

12 JUSTIN LEAVITT: I believe that's right.
13 Colleagues know their studies better than I.

14 I don't think it's right to say that
15 there's no evidence that what Texas is proposing would
16 have an effect, though.

17 And that's where I'm afraid will have to
18 differ. The turn-outs to these have been to date,
19 that's right. They have been absolutely inconclusive.

20 The studies of both registered voters and
21 eligible citizens who do or don't have a certain type
22 of ID over -- that provides for me a more reliable
23 basis of evidence of saying who is this really going
24 to effect.

25 CHAIRMAN TODD SMITH: And you agree that



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1 by providing a non-photo alternative, in addition to
2 what other means we can take would significantly
3 lessen any marginal additional burden on some voters?
4 You agree with that?

5 MR. LEAVITT: I do. I think it's an
6 unnecessary but relatively positive step.

7 CHAIRMAN TODD SMITH: Okay. And you
8 agree, also, if the goal is to insure with regard to
9 these provisional ballots, that is, many of them that
10 should count, do count, do you agree and are you
11 familiar with the way that Florida handles those
12 provisional ballots?

13 And I get this from the descending opinion
14 in the Supreme Court, where they go out of their way
15 to praise Florida in the way that they handle the
16 provisional ballots, not necessarily the legislation,
17 but the way that they handle the provisional ballots,
18 they go out of their way to strike a distinction
19 between Florida and Indiana.

20 And they refuse to go so far as to express
21 the statement that they would find the law in Florida
22 constitutional. But in my opinion, they certainly
23 apply that they might very well, even the most liberal
24 dissenting justices.

25 Because of the fact with regard to those



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1 provisional ballots, instead of them not counting,
2 unless you go through hoops by going downtown within
3 ten days of the vote, they count automatically without
4 the voter doing anything else, unless a group of six
5 committee determines by a majority vote that this is
6 not the vote of the person who cast of the ballot?

7 Do you agree with me that the difference
8 between one route and the other route is material in
9 terms of minimizing any adverse consequences that you
10 figure in this legislation?

11 MR. LEAVITT: I have been cautioned on
12 many occasions not to jump to quickly to phrase
13 Florida's election system and I believe with cause.

14 That said, there are all sorts of problems
15 that provisional ballots themselves cause. And
16 create. And I believe you'll have other witnesses to
17 testify about that as well.

18 It is unquestionably better to have a
19 system in which provisionals automatically count than
20 a system in which they don't. And the Department of
21 Justice actually required that of Florida. That was
22 condition under which they would declare Florida's
23 rule when Florida changed its laws, was that those
24 provisional ballots had to count.

25 There are still other states, in fact,



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1 many other states, that have their election deemed
2 their election systems secure without relying on
3 provisional ballots that accept a broad range of
4 documentation and then accept that that person is who
5 they say they are.

6 Provisional ballots -- I worry about the
7 consistency with which they're counted. I worry about
8 the rates with which they're counted. I worry about
9 the time and expense that it takes to count them.

10 And so I would caution about over-reliance
11 on them. That said, it's better than the alternative
12 where they don't count at all.

13 CHAIRMAN TODD SMITH: Representative
14 Bohac.

15 REPRESENTATIVE BONNEN: Justin, welcome.

16 JUSTIN LEAVITT: Thank you very much, sir.

17 REPRESENTATIVE BOHAC: I've enjoyed your
18 testimony before in front of this committee. I have
19 just a quick question for you.

20 What if we could put the photograph of the
21 individual on the voter card?

22 JUSTIN LEAVITT: On the Voter Registration
23 Certificate you mean?

24 REPRESENTATIVE BOHAC: On the Voter
25 Registration Certificate. Because we really do have



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1 Voter ID now. I mean, we do, right?

2 JUSTIN LEAVITT: Yeah, you require one of
3 the broad range of documents in order to show your
4 identity. That's absolutely right.

5 REPRESENTATIVE BOHAC: But we just don't
6 have photo ID now?

7 JUSTIN LEAVITT: But we do have Voter ID.

8 REPRESENTATIVE BOHAC: What if we could
9 take the person's photograph and put it on the Voter
10 Registration Certificate? Would that be acceptable to
11 you?

12 MR. LEAVITT: If you're going to require
13 that Voter Registration Certificate and didn't allow
14 other documentation, I'd have to come back and say,
15 no, that, too, would be an improvement. It would help
16 as Andrew Young, as Ambassador Young mentioned, it
17 would help other people get identification when they
18 don't currently have photo ID.

19 I would worry a little bit there, too,
20 about the cost and expense and administerability.

21 But the point that you make about Texas'
22 current system, I think, is entirely valid. Texas has
23 a voter law today that requires people to show one of
24 a range of documents, and it requires you to show your
25 registration certificate if you have it, and if you



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1 don't, it allows you to arrive with any number of
2 others.

3 Putting an ID on a Registration
4 Certificate is great if you've got that Registration
5 Certificate on you. But Texas law very sensibly today
6 says if you don't happen to have your Registration
7 Certificate on you, we'll allow you to vote with one
8 of these other forms of ID. And I think that current
9 safeguard is a sensible safeguard that Texas has
10 decided on.

11 So putting a photo on -- if you require
12 that that be the only ID that the voter can present,
13 then I would think that would cause problems, just
14 like requiring just a driver's license, just like
15 requiring just any single kind of ID.

16 REPRESENTATIVE BOHAC: What if we assume
17 for a moment that everybody did have a voter card.
18 Would putting the photograph on that and making that
19 the sole item that you could present to vote and
20 everybody has one and they always have it on them --
21 would that be okay?

22 MR. LEAVITT: It's hard to answer
23 questions about a fictional system or a hypothetical
24 system.

25 REPRESENTATIVE BOHAC: I appreciate the



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1 question. You're testifying on a fictional system
2 now.

3 I mean, the whole testimony is based on a
4 fictional system that we may or may not implement.

5 MR. LEAVITT: Which is why I try to keep
6 my testimony as grounded in real fact that we've
7 investigated as I possibly can. Talking about the
8 studies that have been done. Talking about the rates
9 of fraud that we have seen.

10 It's very difficult to say, you know. If
11 everybody had the sort of ID that were required and
12 everybody carried it were them at all times and
13 everybody showed it to a co-worker and nobody were
14 sent home without being able to vote as a validate
15 caused, then I wouldn't be here because I wouldn't be
16 concerned about that system.

17 But I'd be very concerned that if you put
18 a rule like that in place, it would not be implemented
19 such that everybody had and everybody carried and
20 everybody presented and everybody got to vote.

21 REPRESENTATIVE BOHAC: If they could --
22 and this is my final question to you, let's assume
23 that everybody had one and there was a photograph on
24 the registration card, that that was the medium we
25 used -- would that make competence in the system



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1 greater or less than or the same?

2 MR. LEAVITT: The only evidence that I had
3 seen about voter confidence in the system shows that
4 it would not matter. The only evidence that I have
5 seen is the study the very same state that
6 Representative Anchia decided.

7 It was a national study. It was done with
8 significance assistance. It was a national study and
9 it was done all over the country.

10 And it said, how do you feel? How
11 confident do you feel that there's been no fraud? How
12 confident do you feel that there's been no
13 registration fraud? How confident do you feel that
14 there is no impersonation fraud?

15 And I asked the question five different
16 ways. And they found no correlation whatsoever
17 between the type of ID people were asked for and how
18 confident they felt.

19 So if you asked me would that make people
20 feel more secure, the only data that I have says
21 people would feel exactly the way they feel today.

22 REPRESENTATIVE BOHAC: Thank you, Mr.
23 Leavitt. I appreciate it.

24 CHAIRMAN TODD SMITH: We're at 35 minutes
25 now.



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1 Mr. Heflin, do you have a quick one?

2 REPRESENTATIVE HEFLIN: A few quick ones.

3 I think you gave Ms. Trautman seven
4 minutes.

5 CHAIRMAN TODD SMITH: I think you've
6 already used it several times.

7 JUSTIN LEAVITT: Mr. Fund testified ahead
8 of schedule.

9 JUSTIN LEAVITT: I'm also happy,
10 Mr. Chair, if you want to revisit some of the
11 questions that you asked of Ms. Trautman, I'm happy
12 to --

13 CHAIRMAN TODD SMITH: In order to be fair
14 to the way this committee has been laid out, and I'm
15 going much beyond the same amount of time that all the
16 rest of the witnesses are going to have, but I'm going
17 to give you some leeway.

18 Okay.

19 REPRESENTATIVE HEFLIN: Justin, have you
20 read the bill that's before us today?

21 JUSTIN LEAVITT: I have.

22 REPRESENTATIVE HEFLIN: Now, as to the
23 places mail-in ballots -- is there anything in this
24 bill that would correct the possibility or probability
25 of fraudulent or improper mail-in ballots?



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1 JUSTIN LEAVITT: Not that I've seen.

2 REPRESENTATIVE HEFLIN: As far as to this
3 bill -- is there anything that in this bill that will
4 go beyond what we're doing today that would solve or
5 improve the voter impersonation?

6 JUSTIN LEAVITT: No. I mean, I don't
7 believe that voter impersonation could be a problem,
8 no. I don't believe it needs solving.

9 REPRESENTATIVE HEFLIN: So, now, do you
10 believe that if we go to the bill that we're proposing
11 that's before us today, that there will be a
12 substantial cost to produce an identification for
13 every citizen?

14 JUSTIN LEAVITT: I believe there will
15 certainly be a cost to produce the identification. I
16 actually think your most serious cost is most likely
17 to be in the sort of training that you had mentioned
18 in earlier testimony.

19 You have now a system that's relatively
20 straightforward, and under this system you'd be
21 depending on a lot of co poll workers across the
22 state, which is quite expansive to make a lot of
23 choices individually about whether a document was or
24 was not good enough or was or was not on the right
25 list.



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1 I don't know if studies have been done
2 about the increased cost of training or has gone to a
3 more complex system. When I worry about other
4 additional complexities introduced, I worry that the
5 costs are going to go up.

6 REPRESENTATIVE HEFLIN: Do you think that
7 it would be difficult in the State of Texas under our
8 current law for voter impersonation to take place with
9 that one inept poll worker? Or cooperation from the
10 poll worker? Would that be an unfair statement?

11 JUSTIN LEAVITT: No. I think that would
12 be very fair. I think you have insider help, unless
13 you have somebody who's not doing their job, which is
14 in part why it doesn't happen.

15 REPRESENTATIVE HEFLIN: Do you believe
16 that if we had the voter and they didn't have their
17 identification at that time or came back, even came
18 back with their identification that they signed an
19 Affidavit saying they were, in fact, the person that
20 they represented themselves to be would that
21 disenfranchise voters or would that allow us to target
22 potential fraud?

23 JUSTIN LEAVITT: I think it would allow
24 you to actually target potential fraud and here's why:
25 Affidavits, assuming that they're implemented



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1 correctly, which is a big assumption. People have to
2 know that the Affidavit is actually an option and
3 that's been tricky.

4 Other states have used that sort of system
5 and has said, essentially, if it's good enough for
6 court, if it's good enough for you to swear to
7 something before a court of law and we're going to
8 make legal decisions based on that every day, then
9 it's good enough for the vote.

10 And having accepted that Affidavit and
11 having been able to follow up with it, there have been
12 concerned about either identity or eligible because
13 that's an additional paper trail that's available.
14 And it doesn't send anybody home because as
15 Representative Bohac was saying, everybody arrives
16 with the means to sign that Affidavit.

17 REPRESENTATIVE HEFLIN: Let me give you
18 two scenarios and answer which one you think would be
19 the most disenfranchising.

20 If you went to vote and you saw a huge
21 sign that said if you vote and you're not qualified,
22 but to jail or if you were handed a card and says
23 here's what you need to do to vote next time. An
24 education process that would enhance voter
25 participation as opposed to stop voter participation.



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1 Do you believe you could actually
2 disenfranchise through the negative at signages as I
3 described?

4 JUSTIN LEAVITT: I certainly believe that
5 there are ways to implement a program of trying to
6 ward people away from the polls as ineligible, as
7 well. Yes. I certainly believe you will get
8 unnecessarily scared off depending how you do it.

9 There are ways to intimidate. Certainly
10 there are many states that have seen their share of
11 those through signage at the polls, trying to keep
12 people away, even when they were perfectly eligible.

13 REPRESENTATIVE HEFLIN: Thank you for your
14 testimony.

15 JUSTIN LEAVITT: One other note, very
16 quickly on the Affidavit that you mentioned: Texas
17 voters today, as I understand it, already swear that
18 they are who they say they are.

19 And so to some degree, that paper trail is
20 similar to what I'm talking about. The signature on
21 the poll log, that already exists to some degree.

22 CHAIRMAN TODD SMITH: Representative
23 Anchia.

24 REPRESENTATIVE ANCHIA: Sir, if we were to
25 move to a photo ID requirement, you think it would be



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1 important to avoid disenfranchising folks that people
2 could swear that they did not have ID in order to
3 vote, but that they were the person in the poll vote
4 or they were the person on their Voter Registration
5 Certificate in front of witnesses, the same kind of
6 Affidavit that they'd swear in court and then vote a
7 regular ballot?

8 Do you think that would avoid
9 disenfranchising people?

10 JUSTIN LEAVITT: To be very clear: I
11 don't want to recommend that you move to a photo ID
12 requirement. I don't think that it is necessary.

13 If you would choose to do so, I think that
14 would a very substantial safeguard. It's the very
15 system that the state of Michigan has implemented.

16 REPRESENTATIVE ANCHIA: And you'd be able
17 to go back and you'd have a signature on file. You'd
18 have witnesses who saw this person.

19 Heck, you could even take a picture of the
20 person at that point and say, okay, you don't have ID.
21 The state could furnish ID at that point to that
22 universe of people who had to swear the vote saving
23 provision, right?

24 JUSTIN LEAVITT: Yes.

25 CHAIRMAN TODD SMITH: This witness is at



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1 39 minutes, and however long he goes is however long
2 every other witness for the rest of the day is going
3 to have. We're going to be here a long time.

4 REPRESENTATIVE ANCHIA: Can I ask you a
5 couple questions about the bill? You said you read
6 it.

7 JUSTIN LEAVITT: Yes.

8 REPRESENTATIVE ANCHIA: I was concerned
9 about a couple of the facets of the bill and the
10 workability.

11 The only notice provision I saw was in
12 Section 15.005. This is notice to the public.

13 It says that the notice was going to be on
14 the Voter Registration Certificate. And I went and
15 pulled my old Voter Registration Certificate and
16 looked at the back of it and looked at the font size.
17 And I think it's about in six point font right now.
18 Everything is in English and Spanish.

19 If you were to add notice on the back of
20 the certificate, the font size might go down to 3 or 4
21 point font.

22 Do you want to talk about any ADA
23 questions or HAVA questions problems there?

24 JUSTIN LEAVITT: There are certainly
25 administerability questions. This is part of why I



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1 get concerned. The more complex the law is, the more
2 you have to explain to voters, the more you have to
3 pack into very small print. The other extensive
4 mailing.

5 I believe the bill also mentioned that
6 there would be notice of the requirement on websites
7 and I'm not sure how many people proactively checked
8 the county websites.

9 Usually there will be things that we urge
10 anyone passing new legislation to work out and test
11 ahead of time to make sure that it is actually
12 workable before you sign it into law. And that's a
13 practice to we urge across the board.

14 REPRESENTATIVE ANCHIA: I think there are
15 250 counties in the state, and I believe 81 is
16 websites, just out of, you know, I think those are the
17 numbers that we looked at.

18 So, putting something on a website doesn't
19 cover all the counties in Texas, and then there's the
20 question about how many people have Internet access.
21 And yet another problem.

22 CHAIRMAN TODD SMITH: All right. We're
23 done.

24 Representative Anchia, you can stop.
25 41 minutes. We're going back to the original rule of



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1 30 minutes each because one witness on one side was
2 cut off and you give his time to the other side.

3 I don't think anybody would suggest that
4 that's a fair way to handle this hearing. And I've
5 been trying to make sure that it's equally distributed
6 between witnesses on both sides. And to the extent
7 that we --

8 REPRESENTATIVE ANCHIA: I'm happy to be
9 here as long as we need to, so long as we're getting
10 questions answered. And I don't think you would
11 suggest that my questions are not relevant.

12 CHAIRMAN TODD SMITH: No. What I'm trying
13 to do is stick with the agreement that was had in
14 advance of the hearing that we would hear from all
15 these witnesses to an equal extent and be out of here
16 in time for people to get a night's sleep because of
17 the fact that we're going to be up all night tomorrow
18 night.

19 REPRESENTATIVE ANCHIA: I understand that,
20 but I think what we agreed to was with ten minutes for
21 each witness, but I don't think we agreed to any time
22 limit on the questions.

23 CHAIRMAN TODD SMITH: We agreed there
24 would be 30 minutes' of questions. That was the
25 agreement. Per witness. And this gentleman is at 40



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1 now. Because apparently another witness on the other
2 side of the issue wasn't here long enough to answer
3 the full period of questions.

4 And I've allowed it, but I'm not going to
5 allow it. We're not going to just take them one at a
6 time and be here all night.

7 REPRESENTATIVE ANCHIA: I don't think that
8 was universally understood as an agreement.

9 I understood there would be a ten-minute
10 layout of the front and that was the agreement.

11 CHAIRMAN TODD SMITH: So you thought it
12 was ten minutes and people would ask as many questions
13 as they wanted to? You don't know why --

14 REPRESENTATIVE ANCHIA: As many questions
15 as you deemed. That's right.

16 CHAIRMAN TODD SMITH: Well, that's not the
17 agreement. So you misunderstood it.

18 We're going to have 40 minutes of
19 testimony per witness, ten minutes to say whatever
20 they want, and 30 minutes for the members on the
21 panel. And I think I was quite clear in talking about
22 all the members.

23 Because of that constraint, we're going to
24 have to be respectful. You don't remember that
25 discussion?



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1 REPRESENTATIVE ANCHIA: Well --

2 CHAIRMAN TODD SMITH: Respectful of the
3 members on the committee for everybody to ask the
4 questions --

5 REPRESENTATIVE ANCHIA: I don't think my
6 question's have been disrespectful of anybody,
7 Mr. Chairman, including yourself.

8 CHAIRMAN TODD SMITH: No.

9 REPRESENTATIVE ANCHIA: I tried to be very
10 respectful. I just think it enhances the process if
11 we can get our questions answered, and I don't think
12 there's any downside to it.

13 If you're going to cut me off, that's
14 fine. But in the past, in any of our hearings in the
15 past, we've never had this type of time limit of
16 questions being answered.

17 CHAIRMAN TODD SMITH: Because we've never
18 operated under the constraint of trying to get out of
19 here by a certain period of time so that these members
20 can have a full night's sleep before they stay up
21 tomorrow night.

22 I think that was clear at the beginning of
23 the hearing, Mr. Anchia, and it's applied equally to
24 both sides.

25 It has been my intent to get out of here



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1 by a particular time and make sure that the testimony
2 is evenly distributed and the number of questions
3 asked by both sides is evenly distributed.

4 That means --

5 REPRESENTATIVE ANCHIA: Are we behind on
6 your schedule?

7 CHAIRMAN TODD SMITH: Well, what we have
8 done to this point is taken some of one witness' time
9 on one side of the issue and given it to another
10 witness on the other side of the issue.

11 REPRESENTATIVE ANCHIA: But I still think
12 we're on schedule. If the goal is to finish by
13 midnight, I still think we're on schedule to finish by
14 midnight.

15 CHAIRMAN TODD SMITH: Well, do your
16 calculations in terms of the number of witnesses that
17 we have left on the proposal, which I have framed
18 which is 40 minutes per witness, and the count for
19 extra time for people like Ms. McGeehan to answer any
20 questions as a resource witness, and the extent your
21 questions, I'll be glad to evenly distribute the
22 balance of time between all the witnesses that are
23 here to testify today.

24 Thank you.

25 JUSTIN LEAVITT: Thank you.



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1 CHAIRMAN TODD SMITH: I do appreciate your
2 testimony, and I think all of the members of the
3 committee were benefitted by your testimony. Thank
4 you very much.

5 JUSTIN LEAVITT: Thank you very much. I'm
6 also happy to answer additional questions in writing
7 if the committee wishes.

8 CHAIRMAN TODD SMITH: Thank you. Thank
9 you Mr. Leavitt.

10 At this time the chair calls Michael
11 Ertel.

12 MICHAEL ERTEL: Good afternoon,
13 Mr. Chairman. I'm Michael Ertel, supervisor of
14 elections of Seminole County.

15 CHAIRMAN TODD SMITH: And you're here to
16 testify neutral on Senate Bill 362; is that correct?

17 MICHAEL ERTEL: Right. I'm an election
18 official. I, pretty much, try to think neutral.

19 But I do want to start off by saying that
20 I'm here for the Florida Elections Committee. I'm
21 here to try to help.

22 CHAIRMAN TODD SMITH: Sure.

23 MICHAEL ERTEL: And everyone always wants
24 help from Florida.

25 You know, it takes -- and I've been



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1 listening throughout this and I've loved the serve and
2 the volley -- it takes a very long time to build a
3 good reputation, and it takes just one election, one
4 incident, one thing to ruin it.

5 I'm a Florida Elections Official.

6 CHAIRMAN TODD SMITH: How would you know?

7 MICHAEL ERTEL: I was not in 2000. I've
8 been here since 2005.

9 But, you know, I wanted to talk a little
10 bit about the process that you do and you had
11 mentioned it earlier, Chairman, and I think by the
12 way, that you've done a great job in reading the
13 articles preceding this. You've done a great job
14 being very measured about the process that you're
15 doing.

16 Because it's something that no matter what
17 anybody says, someone is going to claim that this leg
18 is trying to do this, and we're really just the guys
19 in this committee. With this hat on. In our role as
20 administrators, we're just the guys with the black and
21 white stripes on. We're not the referees.

22 So I wanted to talk a little bit about the
23 process that we use for provisional ballots. And you
24 mentioned earlier.

25 I brought a copy of one of our provisional



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1 ballot envelopes. If a voter comes tone the voting
2 booth and they forget their ID, and let me actually
3 back up.

4 In Florida on an application, you can
5 state that you do not have a driver's license. You
6 can state that you do not have a Social Security card.
7 And you can still become a registered voter.

8 So you can claim that I have none of those
9 and we can still register you to vote. We get you all
10 signed up. We get your signature on file.

11 So then you go to the polls. And at the
12 polls, let's say you still don't have that driver's
13 license and you still don't have any other form of ID.
14 You can still vote.

15 And through the provisional ballot method,
16 it's our fail safe method. It's a method that insures
17 that everybody has an opportunity to vote. It keeps
18 our poll workers who work, one day a year, maybe two
19 days a year.

20 It keeps our poll workers from having to
21 make a snap decision from somebody that's standing in
22 front of them that does not have an ID. And perhaps
23 they're embarrassed that they don't have an ID because
24 they forgot it at home.

25 Perhaps they've been told by somebody that



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1 they can't vote because they don't have an idea and
2 they're just going to the polls.

3 They waited in line for 30 minutes and
4 they get up there and then they're told they don't
5 have an ID. So we let them vote. We always, always,
6 let them vote. But we gotta verify they have the
7 ability and the eligibility to vote. And the way we
8 do that is with our provisional ballot process, which
9 is a great process.

10 And as you'd mentioned before, it's one
11 that the voter themselves does not then have to come
12 back to our office and say, see, look, this is me,
13 this is me. They can simply go there, they fill out
14 their ballot, we've got a copy of one of our ballots,
15 not an official, a turn- in ballot.

16 They fill out the ballot. They put it in
17 this envelope. In the secrecy sleeve. They put it in
18 here. They seal it up in front of our poll workers,
19 and they fill out some information on the outside.

20 Our canvassing board, which each of our
21 election supervisors are a member of, unless we're on
22 the ballot ourselves. Our canvassing board, which
23 consists of a judge, a County Commissioner and the
24 Supervisor of Elections.

25 If any of the county commissioners,



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1 normally have taken a side in any of the races that
2 are on the ballot, we don't let them become part of
3 the Canvassing Board.

4 So we have a very clean Canvassing Board.

5 We take a look at this and we compare the
6 signature on the provisional ballot envelope that they
7 filled out at the polls to the signature that they
8 have on their Voter Registration status that we have
9 at the office and they're scanned in.

10 And if the scan at the office is a little
11 fuzzy for some reason, because the quality of the
12 scanner, the day in 1984 when it was scanned in, then
13 we go back when.

14 And we have the paper record because we
15 still have everybody's paper Voter Registration. We
16 look at that and we compare the signatures.

17 And if they match, the voter doesn't have
18 to do anything. And we let the voter know whether or
19 not it was a match or it wasn't a match.

20 The voter leaves the voting both this
21 little receipt. It says call our office. Here's the
22 process we go through.

23 It's a system that gives our voters a
24 sense of confidence that everything is going to be
25 fine have that there's a system in place.



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1 And so this process for folks that don't
2 have their driver's license, for instance, and might I
3 add, that of our voters, we used -- more than
4 95 percent of our voters used uses a driver's license
5 when they go to the polls because that's, you know,
6 one of the required forms of ID.

7 Everybody has a driver's license or a
8 Florida ID, if not, then there's other forms of ID
9 that they can use, as well.

10 But with more than 95 percent of our folks
11 using a driver's license, we also find that it's for
12 the poll workers easier to train. Because 95 percent
13 of your customers -- and I say to our poll workers --
14 explain that running an election, running a voting
15 precinct is a lot like running a restaurant.

16 Our whole goal is to see them, feed them,
17 get them out, so the next person can get in there, go
18 to the voting booth, get out of the parking spot so
19 another voter can get into that very same parking lot
20 spot.

21 If our poll workers are looking at the
22 very same form of ID, 95 percent of the time, it's a
23 driver's license, they know exactly where are to look
24 for the signature have they know exactly where to look
25 for the expiration date. They know exactly where to



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1 look for the photo of the voter. So they can see.

2 Okay, it's easy, it's quick, it's simple. It's almost
3 route by that point.

4 But, again, if the voter forgets their ID
5 on election day, which happens, it happens a lot, if a
6 voter forgets their ID on election day, they simply
7 fill out this, they don't have to call our office.
8 They can if they choose to.

9 They can then come into our office on the
10 next day and say, by the way, here's a photo copy of
11 my driver's license. I'm sorry. I didn't have it,
12 and the Canvassing Board makes the decision. And the
13 Canvassing Board, interesting about this, a Canvassing
14 Board makes the decision at a public meeting that's
15 open to the public.

16 And you all are all elected officials, you
17 know this. Every single time there's an elected
18 official election, at least, 50 percent of the
19 candidates lose. Those 50 percent that lose usually
20 don't want to always blame their own campaign.

21 So we'll have folks come into our can
22 advancing boards meetings where these determinations
23 are made. In fact, the determination being made at a
24 Canvassing Board meeting at the eligibility of this
25 voter is seen by more folks that have a vested



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1 interest in the process of losing candidates.

2 It would be made if it were just done at
3 the polls where a poll worker says, no, I don't think
4 so. Go home. You can't vote.

5 So it's a great process. It's fail safe.
6 It makes our candidates feel better. It makes our
7 voters feel a whole lot better, and it's a more secure
8 process, I believe.

9 And I'll go ahead and shut my trap.

10 CHAIRMAN TODD SMITH: Okay. I want to
11 just nail some things down and be as clear as we can.

12 Florida currently requires a photo ID to
13 vote if you don't, you do this particular ballot?

14 MICHAEL ERTEL: Exactly.

15 CHAIRMAN TODD SMITH: Okay. In other
16 words, it's a more onerous or more progressive, if you
17 heard the testimony of the earlier gentleman, form of
18 identification than what is proposed by the Texas
19 Senate in that they can allow either a photo or two
20 non photos?

21 MICHAEL ERTEL: I read the Senate Bill at
22 length. And there are more options for different
23 various styles, like, you know, concealed weapons
24 permit, things like that that we do not have in
25 Florida.



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1 After this legislative session, I believe
2 we'll be down to like five forms of ID.

3 CHAIRMAN TODD SMITH: You can't cast a
4 non-provisional ballot in Florida unless you have a
5 photo ID?

6 MICHAEL ERTEL: You got it.

7 CHAIRMAN TODD SMITH: Okay. In Texas?
8 Provisional would allow you to cast a regular ballot
9 without a photo ID in Texas; is that correct?

10 MICHAEL ERTEL: Yes, as I read your bill
11 and if it goes through, then yes. The Senate Bill,
12 pardon me. That's right.

13 CHAIRMAN TODD SMITH: Okay. Do you know,
14 since you have had a requirement that the voters have
15 a photo identification, how many provisional ballots
16 have been cast statewide as a percentage of total
17 ballots casts? Do you have any information?

18 MICHAEL ERTEL: Well, I can tell you about
19 our county. In our counties this past year, we had
20 during the presidential elections, where we -- we have
21 400,000 folks in our county. We have 264,000
22 registered voters.

23 CHAIRMAN TODD SMITH: 264?

24 MICHAEL ERTEL: Well, 264,366, well, give
25 or take one.



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1 CHAIRMAN TODD SMITH: Okay.

2 MICHAEL ERTEL: So that many. And we had
3 well over 200,000 folks actually go to the polls. We
4 had a 798 percent turn-out in Seminole County.

5 Of that, we had 244 folks that came -- I'm
6 sorry, 740 folks came to the polls and had to fill out
7 a provisional ballot.

8 CHAIRMAN TODD SMITH: Because they didn't
9 have the proper identification?

10 MICHAEL ERTEL: Not only because they
11 didn't have the proper identification. For a myriad
12 of reasons. Most of the reasons, more than 500 of
13 those folks that didn't have it were because they
14 weren't registered voters.

15 This past election was an election --

16 CHAIRMAN TODD SMITH: Well, you don't have
17 any availability to know how many of that 740 people
18 were cast canning a ballot because they didn't have
19 the proper identification?

20 MICHAEL ERTEL: 14.

21 CHAIRMAN TODD SMITH: 14 okay.

22 MICHAEL ERTEL: But most of them were,
23 again, because this is an election where there's a
24 high turn-out because the number of folks that are
25 that are going to turn-out. Not only registration



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1 numbers went up, of course the percentage of voters,
2 also, remained around the same.

3 CHAIRMAN TODD SMITH: 14 out of 200,000
4 voters?

5 MICHAEL ERTEL: Yep.

6 CHAIRMAN TODD SMITH: And at that point in
7 time those ballots go to the signature board or what
8 you call the Canvassing Board?

9 MICHAEL ERTEL: The Canvassing Board.
10 Correct.

11 CHAIRMAN TODD SMITH: Do you know how many
12 of those 14 ballots were counted because of the way
13 you compared signatures?

14 MICHAEL ERTEL: I'm sorry. It was 14 --
15 pardon me if I misspoke. It was 14 that were not
16 counted because of the way we compare signatures.

17 There were a total of -- well, because we
18 only -- if we count them we don't have the number on
19 how many of those that we ended up counting. But most
20 of them we ended up counting, I think was 224, I
21 think.

22 CHAIRMAN TODD SMITH: Okay. 14 does not
23 count because there was no match of a signature.

24 MICHAEL ERTEL: The signatures did not
25 match.



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1 CHAIRMAN TODD SMITH: You don't know of
2 the 740 how many were because they did not have the
3 proper identification?

4 MICHAEL ERTEL: I think -- actually, I do
5 the numbers here. Hold on one second.

6 We had 740 total provisional ballots and
7 of those 227 counted.

8 Of the ones that did not count, 475 of
9 them was because they were not registered in the state
10 of Florida.

11 Three of them not registered within the
12 correct jurisdiction, and 16 of them, because they
13 were showing up at the wrong precinct to vote and they
14 voted where they worked instead of where they lived.

15 And then we had the 14 that were rejected
16 for the purpose of the provisional ballot not
17 mentioned not because of the signature that they had.

18 CHAIRMAN TODD SMITH: My question is: How
19 many people that cast provisional ballots that were
20 counted?

21 MICHAEL ERTEL: 227.

22 CHAIRMAN TODD SMITH: Because their
23 signature matched?

24 MICHAEL ERTEL: Right. 227 for almost all
25 the reasons that we would be, was for lack of taking



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1 your ID to the polls.

2 CHAIRMAN TODD SMITH: Okay. We're still
3 not -- I'm not getting. What I want to do, if you
4 can, is take all the provisional ballots and segregate
5 all the portion that relates to people not having the
6 proper identification, only, whether they counted or
7 not. What number is that?

8 MICHAEL ERTEL: Only because they don't
9 have the proper ID, I can't break that down. We do a
10 report to the EAC and so I've got the numbers here
11 that we break down.

12 227 of them counted. A vast, vast, vast
13 majority of those were because they did not have a
14 proper ID at the polls.

15 And the reason we can say this with
16 certainty is because it was a general election that
17 I'm talking about.

18 In a primary election there will be folks
19 that go to the polls who are perfectly registered
20 voters. Registered as a member of -- they're an
21 independent party or no party affiliation. They want
22 to vote for a primary candidate of their choice. So
23 they fill out a provisional ballot --

24 CHAIRMAN TODD SMITH: So when you say the
25 vast majority of that 227 that counted was because



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1 they did not have the proper ID --

2 MICHAEL ERTEL: Right.

3 CHAIRMAN TODD SMITH: Can you give me your
4 best judgment of that 227 you --

5 MICHAEL ERTEL: I would say well over 85.

6 CHAIRMAN TODD SMITH: 85 percent?

7 MICHAEL ERTEL: Yes. More than
8 85 percent. And I feel very confident with that.

9 CHAIRMAN TODD SMITH: Okay. So if you say
10 85 percent of 227, of that number, 14 didn't count,
11 unlike what we saw in Indiana? A very tiny proportion
12 of the number of votes casts versus the number in
13 Indiana where many of them did not count in order to
14 handle provisional ballots? Is that fair?

15 MICHAEL ERTEL: We're very proud of the
16 way we do it in Florida.

17 CHAIRMAN TODD SMITH: And do you think
18 that what's happening in your county is representative
19 of what happens in counties across the state or does
20 that vary dramatically by county?

21 MICHAEL ERTEL: It does not vary
22 dramatically by county.

23 Now, there will be and this is one of the
24 elements of the provisional ballot thing, is that
25 establishing the poll worker into who receives the



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1 provisional ballot is varying from every single
2 precinct, from precinct to precinct to precinct.

3 CHAIRMAN TODD SMITH: Okay. In terms of
4 the just the --

5 MICHAEL ERTEL: And that's the beauty of
6 the fail safe, in that we received the provisional
7 ballots and we can make -- even if they a voter should
8 not have received a provisional ballot for a
9 particular reason, we're able to then make a more
10 measured decision back at office instead of having our
11 poll workers make a snap decision at the polls.

12 CHAIRMAN TODD SMITH: Is there any
13 controversy in the state of Florida, either from the
14 right or from the left, if the concern from
15 conservative voters that because you simply have to
16 have a signature match and all these votes are counted
17 automatically, that people that are not legally
18 entitled to vote are being able to vote?

19 And is there a concern on the left that,
20 you know, this is still somehow a disenfranchising
21 legal voters? Any controversy in Florida about the
22 signature? The way you handle the signature?

23 MICHAEL ERTEL: No. And I'll tell you,
24 for the State Association of Supervisors, I'm the
25 media guy. I distribute all the media articles that



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1 are out there about elections. I do a little Monday
2 morning thing.

3 And I haven't seen any. And so I'm an
4 avid reader of the process.

5 CHAIRMAN TODD SMITH: And we've got 14
6 people in your county out of the 200,000 that voted.
7 Those are the only ones that can even be argued are
8 potentially legal voters that are not being allowed to
9 vote; is that correct?

10 MICHAEL ERTEL: And it's a lot like the
11 absentee process where if a voter's signature changes
12 from the time that they've initially registered to
13 vote to the time that this ends up in front of us, if
14 that voter's signature changes -- I've been registered
15 to vote since 1988. I'm 39. So my signatures changed
16 quite a bit, you know, especially from 18 to 39.

17 So if the signature is that vary and that
18 wildly different, that could be the cause of it.

19 And that's what we communicate in almost
20 everything we do throughout an election year, and, in
21 fact, it's in our state turn-out study, that at a
22 minimum every general election year, we put an ad in
23 the newspapers, saying, update your signature. Call
24 the Elections Office. Update your signature.

25 CHAIRMAN TODD SMITH: Now, my



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1 understanding of the standard that you use is that it
2 doesn't require the signatures to match. A majority
3 of the Canvassing Board has to conclude that it's not
4 likely the same signature that was on the
5 registration; is that correct?

6 MICHAEL ERTEL: Correct.

7 CHAIRMAN TODD SMITH: So they can take
8 into consideration the age of the person and the
9 difference in the point in time at which they signed
10 the original ballot? It doesn't require a match, does
11 it? They've got to conclude that it's likely not the
12 same person?

13 MICHAEL ERTEL: Right. Correct.

14 Now, I won't let my Canvassing Board of
15 which I'm not a member take inspect to account the age
16 because I think that that is giving one person an
17 additional heads-up that, you know, an additional, you
18 know, push that other folks would not be able to get.

19 So we don't take into account age. We
20 simply look at the signature. Does this signature
21 match?

22 It doesn't have to be a perfect match. I
23 don't have to write Michael Christopher Ertel on Ertel
24 on my Voter Registration Application back in '88 and
25 then now have -- where my signatures just pure chicken



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1 scratch.

2 As long as the "M" matches, for instance,
3 or the "E" matches. We look for things that say, this
4 is the same person. They're signature may have
5 declined over the last several years, but it's
6 obviously the same person.

7 CHAIRMAN TODD SMITH: Okay.

8 Representative Heflin.

9 REPRESENTATIVE HEFLIN: Okay. On the
10 provisional ballots, once you started the process, how
11 do you go about educating the public on the
12 availability of the provisional ballots?

13 MICHAEL ERTEL: Our provisional ballot if
14 there's a voter that has an issue at the polls, it's
15 one of our education on-site things.

16 If there's a voter that has an issue at
17 the polls, we take the voter off to the side. We have
18 one of our poll workers. He's especially trained
19 solely for the purpose of issue voters.

20 By issue voters, I mean voters who have
21 forgotten ID. Voters who walked into the wrong
22 precinct. And we can look them up on the database and
23 say actually you go vote over there. So we educate
24 them on that.

25 REPRESENTATIVE HEFLIN: Okay.



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1 MICHAEL ERTEL: So even if they walk into
2 our polling location without any knowledge of the
3 elections process because they haven't read the paper,
4 they haven't checked the myriad of mail we've given
5 them, we've helped them on-site.

6 And the provisional ballot envelope that
7 we give them has all the information that they need on
8 it, including, so they don't have to read it all
9 on-site, a little take away so they can go home and
10 say. Okay, here's the number. Each ballot envelope
11 has the serial number on it.

12 So it's something that I, as a former
13 communicator, will think about over-communicating
14 beforehand on-site and afterwards.

15 REPRESENTATIVE HEFLIN: And how much
16 training do you give your poll workers? How much time
17 do you allow for each --

18 MICHAEL ERTEL: Our poll workers -- it
19 depends on the job that they have.

20 REPRESENTATIVE HEFLIN: Okay.

21 MICHAEL ERTEL: The most poll workers that
22 you see when you go into the polls on election day are
23 what we in Seminole County call our inspectors.

24 REPRESENTATIVE HEFLIN: Okay.

25 MICHAEL ERTEL: They're the ones that will



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1 walk up, you fill out the information in the book, and
2 they find your name in the book and they help you out
3 that way.

4 We give them 3 hours of training. Per
5 election. So for instance, in this past election
6 cycle, we had a presidential preference primary, and
7 then the general.

8 They were trained for every single
9 election.

10 REPRESENTATIVE HEFLIN: 3 hours?

11 MICHAEL ERTEL: Very repetitive. Very
12 redundant training to make it fun.

13 REPRESENTATIVE HEFLIN: Now, I represent a
14 rural district. My district is actually larger than
15 nine states. So can you imagine. I have a lot of
16 older citizens. Everybody knows everybody.

17 Do you have a provision where if the poll
18 worker signs a Personal Knowledge Affidavit of yes,
19 this is Mrs. Jones and yeah, she forgot her -- is that
20 an ID provision that would work?

21 MICHAEL ERTEL: You know, personal
22 opinion, and I think that you can't have that kind of
23 thing happening. You can't say, and we train our poll
24 workers on this.

25 If your husband comes into the station and



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1 does not have his ID on him, you know --

2 REPRESENTATIVE HEFLIN: It could be a
3 problem?

4 MICHAEL ERTEL: Exactly.

5 REPRESENTATIVE HEFLIN: Okay.

6 MICHAEL ERTEL: So you can't -- because
7 then the person behind him in line who also doesn't
8 have an ID saying, "Okay, I saw that she let him vote
9 but she's not letting me vote because she claims" --

10 REPRESENTATIVE HEFLIN: Yeah.

11 MICHAEL ERTEL: But, I mean, if there's
12 consistency throughout, there's competence throughout.

13 REPRESENTATIVE HEFLIN: Now, versus the
14 person comes into vote and they're Voter Registration
15 says Linda Sally Jones. That's her name. But their
16 driver's license or their identification says Linda
17 Jones Smith or Linda Smith Jones because they got
18 married or whatever.

19 Is that a problem? Are you a stickler?
20 Does everything have to be correct?

21 JUSTIN LEAVITT: No. A voter's lack of
22 ability to update their driver's license name does not
23 disenfranchise them from voting in Florida. What we
24 check on the identification card is we check the photo
25 and we check the signature.



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1 REPRESENTATIVE HEFLIN: Okay.

2 MICHAEL ERTEL: It's a photo and signature
3 ID.

4 REPRESENTATIVE HEFLIN: Okay. Now,
5 earlier the Chairman was asking you questions about
6 Florida having a Voter ID. You were, kind of,
7 hesitant. Were you hesitant -- do you call it a Voter
8 ID or do you have -- what do you call it?

9 MICHAEL ERTEL: Well, each county does it
10 differently. In our county we call it a Voter
11 Information Card and I actually do keep mine on me
12 because I'm an elections guy, of course.

13 REPRESENTATIVE HEFLIN: Oh, it's in your
14 wallet?

15 MICHAEL ERTEL: Yeah, it's in my wallet.
16 It's an Information Card. It's not necessarily to
17 vote. It's simply an Information Card that says
18 here's where your polling location is. Here's who
19 your representatives are. Here's how to get ahold of
20 the Elections Office.

21 REPRESENTATIVE HEFLIN: But all they need
22 to vote is their driver's license or some acceptable
23 form of ID?

24 MICHAEL ERTEL: Right. Driver's license.
25 We also take a combination of various IDs. If you



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1 have, for instance, a credit card with a photo on it,
2 or a student ID with their signature on it, we can
3 combine those two, mix up and make --

4 REPRESENTATIVE HEFLIN: Okay. So you can
5 combine a non-photo ID with like a water bill with a
6 photo ID with the same address?

7 MICHAEL ERTEL: Not a water bill. An
8 actual ID of some form.

9 REPRESENTATIVE HEFLIN: An official ID of
10 some form?

11 MICHAEL ERTEL: Exactly.

12 REPRESENTATIVE HEFLIN: Are they
13 governmental entities or --

14 MICHAEL ERTEL: Not only governmental
15 entities. It's narrowing. It's military ID. It's
16 credit card. Student ID. Things like that.

17 REPRESENTATIVE HEFLIN: Thank you very
18 much.

19 MICHAEL ERTEL: Thank you.

20 CHAIRMAN TODD SMITH: Okay.

21 Members, any other questions?

22 REPRESENTATIVE BROWN: I do.

23 CHAIRMAN TODD SMITH: Okay.

24 Representative Brown.

25 REPRESENTATIVE BROWN: Florida is, kind



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